

The Honorable

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

King County, on behalf of itself and similarly
situated counties,

Plaintiff,

v.

JUUL Labs, Inc., f/k/a PAX Labs, Inc., PAX
Labs Inc., Altria Group, Inc., Altria Client
Services, Altria Group Distribution Company,
Nu Mark LLC, and Nu Mark Innovations, Ltd.,

Defendants.

No.

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED
()

KELLER ROHRBACK L.L.P.

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CLASS ACTION COMPLAINT
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I. INTRODUCTION

1. One of the great public health success stories over the past decade has been a reduction in youth tobacco use and in nicotine addiction. Youth smoking rates plummeted from 28% in 2000 to 7.6% in 2017.¹ This success has been the result of years of litigation and strict regulation. It is also due to a public health message that Big Tobacco can no longer dispute or contradict, and which is simple, stark, and effective: smoking kills.

2. This incredible progress towards eliminating youth tobacco use has now largely been reversed due to e-cigarettes and vaping. Between 2011 and 2015, e-cigarette use among high school and middle school students increased 900%.² Between 2017 and 2018, e-cigarette use increased 78% among high school students, from 11.7% of high school students in 2017 to 20.8% of high schoolers in 2018.³ Among middle school students, e-cigarette use increased 48% between 2017 and 2018.⁴ In 2018, 4.9 million middle and high school students used tobacco products, with 3.6 million of those students using e-cigarettes.⁵ Between 2017 and 2018, the number of youth e-cigarette users increased by 1.5 million.⁶

3. Consistent with these national numbers, King County youth are vaping at high rates—which continue to climb. One in every four King County high school seniors reported

¹ Meredith Berkman, *Testimony of Meredith Berkman, Parents Against Vaping E-cigarettes*, U.S. House Committee on Oversight & Reform (July 24, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Berkman-PAVe%20Testimony.pdf>.

² Jerome Adams, *Surgeon General's Advisory on E-cigarette Use Among Youth*, Ctrs. for Disease Control & Prevention (Dec. 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

³ *Id.*

⁴ 2018 NYTS Data: A startling rise in youth e-cigarette use, U.S. Food & Drug Admin. (Feb. 2, 2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/2018-nyts-data-startling-rise-youth-e-cigarette-use>.

⁵ *Id.*

⁶ *Id.*

vaping in the past 30 days.⁷ Between 2016 and 2018, e-cigarette use increased 82% among King County 10th graders.⁸ In the largest school district in King County, Seattle Public Schools, 90% percent of tobacco and nicotine violations during the 2017-2018 school year were for vaping, and over 60% of those violations were for JUUL use specifically.⁹

4. According to the Centers for Disease Control and Prevention (“CDC”) Director Robert Redfield, “The skyrocketing growth of young people’s e-cigarette use over the past year threatens to erase progress made in reducing tobacco use. It’s putting a new generation at risk for nicotine addiction.”¹⁰ The U.S. Food and Drug Administration (“FDA”) Commissioner Scott Gottlieb described the above statistics as “astonishing” and both the FDA and the U.S. Surgeon General have appropriately characterized youth vaping as an “epidemic.”¹¹ The National Institute on Drug Abuse found that the 2018 spike in nicotine vaping was the largest for any substance recorded in 44 years, and the Secretary of the U.S. Department of Health and Human Services declared that “[w]e have never seen use of any substance by America’s young people rise as rapidly as e-cigarette use [is rising].”¹²

⁷ VAPOR & E-CIGARETTE USE IN SEATTLE & KING COUNTY, Public Health – Seattle & King County <https://kingcounty.gov/depts/health/tobacco/~media/depts/health/tobacco-vapor/documents/vaping-infographic.ashx>

⁸ *Id.*

⁹ Amy Radil, *Seattle experts say restrictions on vaping must go further*, KUOW (Nov. 21, 2018), <https://kuow.org/stories/as-students-embrace-juuling-seattle-experts-say-restrictions-must-go-farther>.

¹⁰ *Texas governor signs law increasing the age to buy tobacco products to 21*, CNN (June 8, 2019), https://m.cnn.com/en/article/h_b4cf0b92fd821251a4ae48df9b717145.

¹¹ Angelica LaVito, *FDA chief Gottlieb threatens to pull e-cigarettes off market if ‘astonishing’ surge in teen use doesn’t slow*, CNBC (Nov. 16, 2018), <https://www.cnbc.com/2018/11/16/fda-chief-gottlieb-threatens-to-pull-e-cigarettes-off-market.html>; Jayne O’Donnell, *FDA declares youth vaping an epidemic, announces investigation, new enforcement*, USA Today (Sept. 12, 2018), <https://www.usatoday.com/story/news/politics/2018/09/12/fda-scott-gottlieb-youth-vaping-e-cigarettes-epidemic-enforcement/1266923002/>.

¹² Jan Hoffman, *Study Shows Big Rise in Teen Vaping This Year*, N.Y. Times (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/health/ecigarettes-teens-nicotine-.html>; Rajiv Bahl, *Teen Use of Flavored Tobacco was Down, But E-Cigarettes Are Bringing It Back Up*, Healthline (Jan. 9, 2019), <https://www.healthline.com/health-news/flavored-tobacco-use-rising-again-among-teens#An-unhealthy-habit>.

5. A major cause of this epidemic is JUUL Labs, Inc., the maker of the JUUL e-cigarette. JUUL entered the e-cigarette market in 2015 and now controls over 70% of it.¹³ Over a million JUUL e-cigarettes were sold between 2015 and 2017.¹⁴ In 2017, JUUL generated over \$224 million in retail sales, a 621% year-over-year increase.¹⁵ By June 2018, sales had skyrocketed another 783%, reaching \$942.6 million.¹⁶ The e-cigarette category as a whole grew 97% to \$1.96 billion in the same period, largely based on JUUL's market success.¹⁷ JUUL's dominance of the e-cigarette market has been so rapid, and so complete, that the act of vaping is now often referred to as "juuling."

6. JUUL's market dominance attracted the attention of government regulators, including the FDA. On February 24, 2018, the FDA sent a letter to JUUL expressing concern about the popularity of its products among youth and demanding that JUUL produce documents regarding its marketing practices.¹⁸ On September 12, 2018, the FDA sent letters to JUUL and other e-cigarette manufacturers putting them on notice that their products were being used by youth at disturbing rates.¹⁹ In October 2018, the FDA raided JUUL's headquarters and seized

¹³ Richard Craver, *Juul ends 2018 with 76 percent market share*, Winston-Salem J. (Jan. 8, 2019), https://www.journalnow.com/business/juul-ends-with-percent-market-share/article_6f50f427-19ec-50be-8b0c-d3df18d08759.html.

¹⁴ Melia Robinson, *How a startup behind the 'iPhone of vaporizers' reinvented the e-cigarette and generated \$224 million in sales in a year*, Bus. Insider (Nov. 21, 2017), <https://www.businessinsider.com/juul-e-cigarette-one-million-units-sold-2017-11/>.

¹⁵ *Id.*

¹⁶ Angelica LaVito, *Popular e-cigarette Juul's sales have surged almost 800 percent over the past year*, CNBC Health & Sci. (Sept. 11, 2018), <https://www.cnbc.com/2018/07/02/juul-e-cigarette-sales-have-surged-over-the-past-year.html>.

¹⁷ *Id.*

¹⁸ Matthew Holman, *Letter from Director of Office of Science, Center for Tobacco Products, to Zaid Rouag, at JUUL Labs, Inc.*, U.S. Food & Drug Admin. (Apr. 14, 2018), <https://www.fda.gov/media/112339/download>.

¹⁹ *Letter From US FDA to Kevin Burns*, U.S. Food & Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/media/119669/download>.

1 more than a thousand documents relating to JUUL’s sales and marketing practices.²⁰ As of
 2 October 2019, the FDA, the Federal Trade Commission, multiple state attorneys general, and the
 3 U.S. House of Representatives Committee on Oversight and Reform have all commenced
 4 investigations into JUUL’s role in the youth vaping epidemic and whether JUUL’s marketing
 5 practices purposefully targeted youth.
 6

7 7. As the pressure on JUUL intensified in late 2018, Altria—maker of Marlboro
 8 cigarettes, parent company of Philip Morris USA, and one of the largest tobacco companies in
 9 the world—stepped in to assist. On December 20, 2018, Altria announced a \$12.8 billion equity
 10 investment in JUUL, which gave it a 35% stake in the company. Just several weeks prior to this
 11 announcement, Altria had criticized JUUL’s marketing practices in a letter to the FDA and
 12 declared that “pod-based products significantly contribute to the rise in youth use of e-vapor
 13 products.” Altria removed its own pod-based products, the MarkTen Elite and Apex by
 14 MarkTen, from the market—only to commit its substantial resources, regulatory knowledge, and
 15 lobbying muscle to protecting and expanding JUUL’s market share, which, as Altria and JUUL
 16 both know, relies heavily on youth.
 17

18 8. JUUL and Altria are now describing their collaboration as a “harm reduction
 19 opportunity,” and JUUL insists it never marketed to youth. These assertions fall flat against the
 20 facts, as detailed below. Altria has described JUUL’s device as “compelling” and “a terrific
 21 product.” In fact, JUUL has compelled a generation of youth, who were never cigarette smokers,
 22 into nicotine addiction and put them at risk for severe lung injury or other health harms resulting
 23 from aerosol inhalation. JUUL and Altria are working to maintain JUUL’s record-breaking sales
 24
 25

26 ²⁰ Laurie McGinley, *FDA seizes Juul e-cigarette documents in surprise inspection of headquarters*, Wash. Post
 (Oct. 2, 2018), <https://www.washingtonpost.com/health/2018/10/02/fda-seizes-juul-e-cigarette-documents-surprise-inspection-headquarters/>.

1 and defendant are citizens of different states. This Court has supplemental jurisdiction over the
 2 state law claims pursuant to 28 U.S.C. § 1367.

3 12. The Court has personal jurisdiction over Defendants because they do business in
 4 the Western District of Washington and have sufficient minimum contacts with this District.
 5 Defendants intentionally avail themselves of the markets in this State through the promotion,
 6 marketing, and sale of the products at issue in this lawsuit to render the exercise of jurisdiction
 7 by this Court permissible under Washington law and the U.S. Constitution.

8 13. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
 9 1391 (b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims
 10 at issue in this Complaint arose in this District and Defendants are subject to the Court's personal
 11 jurisdiction with respect to this action.
 12

13 III. PARTIES

14 14. Plaintiff King County ("Plaintiff" or "King County" or "County") is a
 15 Washington County organized and existing under the laws of the State of Washington, RCW
 16 36.01 *et seq.*

17 15. Defendant JUUL Labs, Inc., f/k/a PAX Labs, Inc. ("JUUL"), incorporated in
 18 Delaware on March 12, 2007 (file no. 4315504), and has its principal place of business in San
 19 Francisco, California. JUUL manufactures, designs, sells, markets, promotes and distributes
 20 JUUL e-cigarettes, JUULpods and accessories.
 21

22 16. Defendant PAX Labs, Inc., incorporated in Delaware on April 21, 2017 (file no.
 23 6387684), has its principal place of business in San Francisco, California. PAX Labs, Inc.'s
 24 current website says it was founded in 2007. For much of the relevant time period and until at
 25 least 2017, PAX Labs, Inc. and JUUL operated as the same company. During that time, JUUL
 26

1 manufactured, designed, sold, marketed, promoted, and distributed JUUL e-cigarettes,
2 JUULpods, and accessories as a part of PAX Labs, Inc.

3 17. Defendant Altria Group, Inc. is a Virginia corporation, having its principal place
4 of business in Richmond, Virginia. Altria is one of the world's largest producers and marketers
5 of tobacco products. On December 20, 2018, Altria purchased a 35% stake in JUUL.
6

7 18. Defendant Altria Client Services Inc. is a New York corporation and wholly
8 owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico County,
9 Virginia. Altria Client Services Inc. provides Altria Group, Inc. and its companies with services
10 in many areas including digital marketing, packaging design & innovation, product development,
11 and safety, health, and environmental affairs. On September 25, 2019, the former senior vice
12 president and chief growth officer of Altria Client Services Inc., K.C. Crosthwaite, became the
13 new chief executive of JUUL.
14

15 19. Defendant Altria Group Distribution Company is a Virginia corporation and
16 wholly owned subsidiary of Altria Group, Inc. with its principal place of business in Henrico
17 County, Virginia. Altria Group Distribution Company provides sales, distribution and consumer
18 engagement services to Altria's tobacco companies.

19 20. Defendant Nu Mark LLC is a Virginia corporation and wholly owned subsidiary
20 of Altria Group, Inc., with its principal place of business in Richmond, Virginia. Nu Mark LLC
21 was engaged in the manufacture and sale of Altria's electronic vapor products. Shortly before
22 Altria purchased a 35% stake in JUUL in December 2018, Altria Group, Inc. announced that Nu
23 Mark would be discontinuing the production and sale of all e-vapor products.
24

25 21. Defendant Nu Mark Innovations, Ltd. is a subsidiary of Nu Mark LLC located in
26 Beit Shemesh, Israel. Nu Mark Innovations, Ltd. provides digital marketing and customer care

services for Nu Mark LLC and Altria's e-vapor brands, as well as product and technology development services.

IV. ALLEGATIONS OF FACT

A. The Rise of JUUL: Following Big Tobacco's Footsteps

22. JUUL was founded by Adam Bowen and James Monsees. The company's beginnings can be traced to the pair's collaboration on a product design master's thesis when they were graduate students at Stanford University in 2004—Monsees completing a Master of Fine Arts in Product Design, and Bowen a Master of Science in Mechanical Engineering in Product Design.²¹ Their proposed product? A better cigarette.



Adam Bowen and James Monsees Source: Juul

23. Monsees has described the cigarette as “the most successful consumer product of all time . . . an amazing product.”²² But years of anti-smoking campaigns have successfully de-normalized cigarette smoking. As part of their product design research, Monsees and Bowen

²¹ Allison Keeley, *Vice Made Nice?*, Stanford Mag., (Aug. 2012), <https://stanfordmag.org/contents/vice-made-nice>.

²² Gabriel Montoya, *Pax Labs: Origins with James Monsees*, Social Underground, <https://socialunderground.com/2015/01/pax-ploom-origins-future-james-monsees/> (last visited Sept. 7, 2019).

1 interviewed smokers who talked about feeling self-conscious of the signs of smoking, for
 2 example, coming back into a room after a smoke break and smelling like smoke, or having their
 3 hands smell like cigarettes no matter even after washing them multiple times.²³ They ended their
 4 presentation with a clip from a South Park episode, showing the characters assembled at the
 5 Museum of Tolerance and shaming a smoker.²⁴ Monsees and Bowen thus set out to “deliver[]
 6 solutions that refresh the magic and luxury of the tobacco category” and recreate the lost “ritual
 7 and elegance that smoking once exemplified.”²⁵

9 24. Essentially, Monsees and Bowen saw a market opportunity in a generation of
 10 consumers brought up on anti-smoking norms. In Monsees’ words, they wanted to redesign the
 11 cigarette “to meet the needs of people who want to enjoy tobacco but don’t self-identify with—
 12 or don’t necessarily want to be associated with—cigarettes.”²⁶ Monsees saw “a huge opportunity
 13 for products that speak directly to those consumers who aren’t perfectly aligned with traditional
 14 tobacco products.”²⁷

16 25. At one point during their thesis presentation, Monsees states, “The cigarette is
 17 actually a carefully engineered product for nicotine delivery and addiction.”²⁸ This description
 18 applies just as well to the product he and Bowen would launch a decade later—JUUL.

19 26. The outcome of Monsees and Bowen’s thesis project was a “heat-not-burn” e-
 20 cigarette, which uses loose-leaf tobacco. The device heated tobacco contained in pods to a
 21

23 ²³ Jordan Crook, *This is the Stanford thesis presentation that launched Juul*, Tech Crunch (Feb. 27, 2019),
 24 <https://techcrunch.com/2019/02/27/this-is-the-stanford-thesis-presentation-that-launched-juul/>.

24 ²⁴ *Id.*

25 ²⁵ *Onboardly Interview with Ploom Cofounder and CEO James Monsees*, Pax.com (Apr. 30, 2014),
 26 <https://www.pax.com/blogs/press/onboardly>.

26 ²⁶ *Id.*

27 ²⁷ *Id.*

28 ²⁸ See *supra* note 23.

1 constant temperature, vaporizing nicotine and flavor without burning the materials or producing
2 smoke.

3 27. After graduation, Bowen and Monsees worked on bringing their thesis project to
4 the market, incorporating under the name Ploom in 2007. In those early years, they spent a lot of
5 time talking about what Bowen called “the kind of typical thoughts of evil Big Tobacco
6 companies like coming down and squashing you.”²⁹ But ultimately, that “was not really an
7 issue.”³⁰ In fact, not only did Big Tobacco not squash them, but the opposite. Although Bowen
8 and Monsees characterized their products as aimed toward consumers not aligned with
9 traditional tobacco products, they themselves have aligned with Big Tobacco on at least two
10 occasions: first, with Japan Tobacco and then with JUUL.
11

12 28. In 2010, Ploom launched its e-cigarette as the ModelOne, using pods of loose-leaf
13 tobacco heated by butane. It did not catch on. Ploom only sold a few thousand of them. By then a
14 company with a dozen employees, Ploom was faltering, in need of money, technological
15 expertise, and marketing savvy.³¹
16

17 29. Help came from Japan Tobacco International (“JTI”), a division of Japan Tobacco
18 Inc., the fourth-largest tobacco company in the world. In December 2011, JTI and Ploom entered
19 into a strategic agreement, which gave JTI a minority stake in Ploom and made it a strategic
20 partner. In a statement regarding the agreement, Monsees said, ““We are very pleased to partner
21 with JTI as their deep expertise, global distribution networks and capital resources will enable us
22
23
24

25 ²⁹ Keeley, *supra* note 21.

26 ³⁰ *Id.*

³¹ David H. Freedman, *How Do You Sell a Product When You Can't Really Say What It Does?*, Inc.com,
<https://www.inc.com/magazine/201405/david-freedman/james-monsees-ploom-ecigarette-company-marketing-dilemma.html> (accessed Oct. 16, 2019).

1 to enter our next phase of growth and capitalize on global expansion opportunities.”³² As Bowen
 2 explained in an interview, “We were still doing a lot of our own internal product development,
 3 but now we had access to floors of scientists at JTI.”

4 30. In 2012, Ploom unveiled the PAX, a loose-leaf vaporizer that didn’t use pods, but
 5 which was much more successful. The following year, Ploom combined elements of the PAX
 6 with the pod system as the ModelTwo. Although consumers were enthusiastic about both the
 7 PAX and the ModelTwo, the products were limited to a small, high-end market. The PAX, for
 8 example, retailed for \$250 when it was first marketed. But, as one of Ploom’s investors remarked
 9 in 2014, “The company is going to invade the bigger, lower-end market now dominated by e-
 10 cigarettes.”³³ He explained that Ploom had “lots of products in the works” and that “we know
 11 we need something cheaper than PAX to go after the mass market. There are still huge
 12 opportunities out there.”³⁴

13
 14
 15 31. In February 2015, Ploom and JTI ended their relationship, with buying back JTI’s
 16 minority stake in the business. JTI acquired the ModelTwo and pods product line, as well as the
 17 Ploom name, while Ploom kept its open-system PAX vaporizer and changed its name to PAX
 18 Labs Inc. Monsees characterized the partnership as having “afforded both parties many mutual
 19 benefits,” but said that the new arrangement would “fuel continued growth” and that PAX
 20 intended “rapid rollouts of new products.”³⁵

21
 22
 23
 24 ³² *Innovative Partnership for Ploom and Japan Tobacco International JTI to Take Minority Share in Ploom*, Japan
 Tobacco Int’l, [https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-](https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-international-jti-take-minority)
 25 [international-jti-take-minority](https://www.jti.com/our-views/newsroom/innovative-partnership-ploom-and-japan-tobacco-international-jti-take-minority) (accessed Oct. 16, 2019).

26 ³³ Freedman, *supra* note 51.

³⁴ *Id.*

³⁵ *JTI to Acquire Ploom Product Line*, Convenient Store News (Feb. 16, 2015), [https://csnews.com/jti-acquire-](https://csnews.com/jti-acquire-ploom-product-line#close-olyticsmodal)
[ploom-product-line#close-olyticsmodal](https://csnews.com/jti-acquire-ploom-product-line#close-olyticsmodal).

32. PAX made good on its promise of new products and invading the bigger, lower-end market. As discussed further below, PAX launched the JUUL in June 2015 with a well-publicized launch party in New York City and a viral social media marketing campaign.

33. The company renamed itself JUUL Labs, Inc. in 2017.

34. By the close of 2017, according to Nielsen data, JUUL had surpassed its competitors in capturing 32.9 percent of the e-cigarette market, with British American Tobacco at 27.4 percent and Altria at 15.2 percent.³⁶ The total e-cigarette market expanded 40 percent to \$1.16 billion.³⁷

35. In 2018, JUUL's gross profit margins were 70%³⁸ and it represented 76.1% of the national e-cigarette market.³⁹ In a complaint it filed in November 2018 against 24 vape companies for alleged patent infringement, JUUL asserted that it was "now responsible for over 95% of the growth in the ENDS pod refill market in the United States" and included the following chart:⁴⁰

³⁶ Ari Levy, *E-cigarette maker Juul is raising \$150 million after spinning out of vaping company*, CNBC (Dec. 19, 2017), <https://www.cnbc.com/2017/12/19/juul-labs-raising-150-million-in-debt-after-spinning-out-of-pax.html>.

³⁷ *Id.*

³⁸ Dan Primack, *Scoop: The Numbers Behind Juul's Investor Appeal*, Axios (July 2, 2018), <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>.

³⁹ Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market 2*, Stanford Res. into the Impact of Tobacco Advert. (2019), http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf.

⁴⁰ Verified Complaint Under Section 337 of the Tariff Act of 1930 at 6, *In the Matter of Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof*, Investigation No. 337-TA-1141 (USITC Nov. 19, 2018).

Appendix 5: U.S. ENDS Pod Market Retail Unit Sales Growth 2018

4-Week Unit Sales by End Date

	Nielsen			IRI		
	Apr 21	Sep 8	Share of Growth	Apr 22	Sep 9	Share of Growth
Total Market	36,002,645	55,773,039	100%	29,546,883	50,793,955	100%
Juul	22,618,886	41,501,172	95.5%	14,964,158	35,166,120	95.1%
Vuse	6,385,922	6,172,595	-1.1%	7,204,900	7,409,312	1.0%
MarkTen	3,677,300	4,240,285	2.8%	2,904,168	3,230,237	1.5%
Logic	1,785,167	2,018,023	1.2%	1,928,841	1,876,006	-0.2%
Blu	1,062,360	1,461,127	2.0%	1,305,209	1,937,225	3.0%
Other	473,010	379,837	-0.5%	1,239,607	1,175,055	-0.3%

36. JUUL shattered previous records for reaching decacorn status, reaching valuation of over \$10 billion in a matter of months—four times faster than Facebook.⁴¹ This all came just three years after its product launch.

37. JUUL's staggering commercial success didn't come from a blank slate. Under the Master Settlement Agreement between Big Tobacco and the States, the public has access to hundreds of thousands of Big Tobacco's internal documents. In creating JUUL, Monsees and Bowen carefully studied the marketing strategies, advertisements, and product design of Big Tobacco. As Monsees candidly acknowledged, the internal tobacco documents "became a very intriguing space for us to investigate because we had so much information that you wouldn't

⁴¹ Zack Guzman, *Juul Surpasses Facebook As Fastest Startup to Reach Decacorn Status*, Yahoo! Fin. (Oct. 9, 2019), <https://finance.yahoo.com/news/juul-surpasses-facebook-fastest-startup-reach-decacorn-status-153728892.html>.

1 normally be able to get in most industries. And we were able to catch-up, right, to a huge, huge
 2 industry in no time. And then we started building prototypes.”⁴²

3 38. Monsees and Bowen reviewed documents in the Big Tobacco archive that
 4 included information on how to manipulate nicotine pH to maximize nicotine delivery in a vapor
 5 while minimizing the “throat hit” that may potentially deter new smokers. Other records relate to
 6 tobacco industry market strategies and advertisements designed to lure non-smoking youth.
 7 Monsees and Bowen were able to take advantage of an extensive online tobacco advertising
 8 research database maintained by the Stanford Research into the Impact of Tobacco Advertising
 9 (“SRITA”), an inter-disciplinary research group devoted to researching the promotional activities
 10 of the tobacco industry. SRITA’s database contains approximately 50,000 original tobacco
 11 advertisements. According to Monsees, JUUL’s advertising was informed by traditional tobacco
 12 advertisements, and SRITA in particular had been very useful to JUUL.⁴³

13 39. It is no secret that a good portion of the Big Tobacco playbook involved targeting
 14 youth. Beginning in the 1950s, JUUL’s now corporate affiliate, Philip Morris, intentionally
 15 marketed cigarettes to young people under the age of 21 to recruit “replacement smokers” to
 16 ensure the economic future of the tobacco industry.⁴⁴ Philip Morris knew that youth smoking
 17 was essential to the tobacco industry’s success and longevity, as an internal Philip Morris
 18 document makes clear: “It is important to know as much as possible about teenage smoking
 19 patterns and attitudes. Today’s teenager is tomorrow’s potential regular customer, and the
 20 overwhelming majority of smokers first begin to smoke while still in their teens.”⁴⁵ For this
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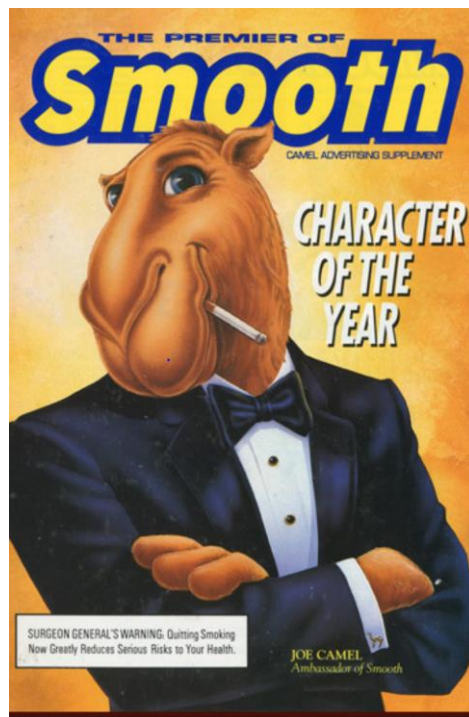
24 ⁴² Montoya, *supra* note 22.

25 ⁴³ Jackler et al., *supra* note 39 at 27.

26 ⁴⁴ Amended Final Opinion at 972, *U.S. v. Philip Morris*, No. 99-cv-2496 (D.D.C. Aug. 17, 2006), ECF 5750.

⁴⁵ *Tobacco Company Quotes on Marketing to Kids*, Campaign for Tobacco-Free Kids (May 14, 2001),
<https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>.

reason tobacco companies focused on the 14-24 year-old age group, because “young smokers have been the critical factor in the growth” of tobacco companies and the 14-18 year-old group is an increasing segment of the smoking population.⁴⁶ As the Vice-President of Marketing at R.J. Reynolds Tobacco Company [“RJR”] explained in 1974, the “young adult market . . . represent[s] tomorrow’s cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume—for at least the next 25 years.”⁴⁷ RJR’s now-infamous Joe Camel “ambassador of Cool” advertising campaign, which ran from 1988 through 1997, exemplifies the importance the tobacco industry placed on hooking young smokers early.⁴⁸



⁴⁶ *Id.*

⁴⁷ C.A. Tucker, *Marketing Plans Presentation to RJR B of D*, Truth Tobacco Industry Documents, U. of S.F. (Sept. 30, 1974), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=yprmw0091>.

⁴⁸ *Joe Camel: Character of the Year Advertisement*, Stanford U. Res. into the Impact of Tobacco Advert. (1990), http://tobacco.stanford.edu/tobacco_main/images.php?token2=fm_st138.php&token1=fm_img4072.php&theme_file=fm_mt015.php&theme_name=Targeting%20Teens&subtheme_name=Joe%20Camel.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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40. Big Tobacco, of course, is now prohibited from employing these tactics and strategies to market traditional cigarettes by virtue of the Master Settlement Agreement and subsequent regulations. But nothing prevented JUUL from doing so.

B. The Secret to JUUL's Success: Hooking Kids

41. Because of Big Tobacco's demonstrated effectiveness at addicting youth to nicotine, cigarette manufacturers operate under tight restrictions regarding their advertising and marketing activities. By way of example, cigarette companies may not:

- A. use outdoor advertising such as billboards;
- B. sponsor events;
- C. give free samples;
- D. pay any person to "use, display, make reference to or use as a prop any Tobacco Product, Tobacco Product package . . . in any "Media;"
- E. pay any third party to conduct any activity which the tobacco manufacturer is prohibited from doing; or
- F. sell "flavored" cigarettes.

42. All of these above activities were prohibited because of their effectiveness at appealing to youth. As described below, all of these activities figured prominently in JUUL's marketing campaign.

43. According to Dr. Robert Jackler, an otolaryngologist and professor at Stanford University School of Medicine and principal investigator for SRITA, JUUL's initial marketing was "patently youth oriented."⁴⁹ The JUUL's 2015 ad campaign, called "Vaporized" was

⁴⁹ Robert K. Jackler, *The Role of the Company in the Juul Teen Epidemic, Testimony of Robert Jackler before the House Subcommittee on Economic and Consumer Policy* (July 24, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Jackler%20Testimony.pdf> at 2 [hereinafter "Jackler Testimony"].

1 designed to create a “cult-like following.”⁵⁰ Its imagery featured a vivid color scheme and
 2 models in their twenties in poses that researchers note are evocative of behaviors more
 3 characteristic of underage teens than mature adults.⁵¹ Dr. Jackler and his colleagues found it
 4 “clear” that this imagery resonated with underage teens who aspire to emulate trendsetting young
 5 adults.⁵²

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 7 44. Tobacco advertisers have long understood that teens are attracted to such imagery.
 8 The Vaporized campaign was featured on the front page of VICE magazine, “the #1 youth media
 9 company in the world.”⁵³ In the summer of 2015, an animated series of Vaporized billboards,
 10 with the campaign’s youth-appealing imagery, were displayed in New York’s Times Square.⁵⁴

11 45. Over the first year after JUUL launched its ad campaign in June 2015, it held a
 12 series of at least 50 highly stylized parties, typically with rock music entertainment, in cities
 13 across the United States.⁵⁵ Thousands of young people were given free nicotine-filled JUULpods
 14 (appropriately named “JUUL starter kits”), and JUUL posted photos of various young people
 15 enthusiastically puffing on JUULs across their social media channels.⁵⁶ JUUL also featured
 16 popular stars such as Katy Perry holding a JUUL at the Golden Globes.⁵⁷

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 ⁵⁰ *Id.* at 4.

24 ⁵¹ Jackler et al., *supra* note 39.

25 ⁵² *Id.* at 7.

26 ⁵³ *Id.* at 5.

⁵⁴ *Id.* at 17-18.

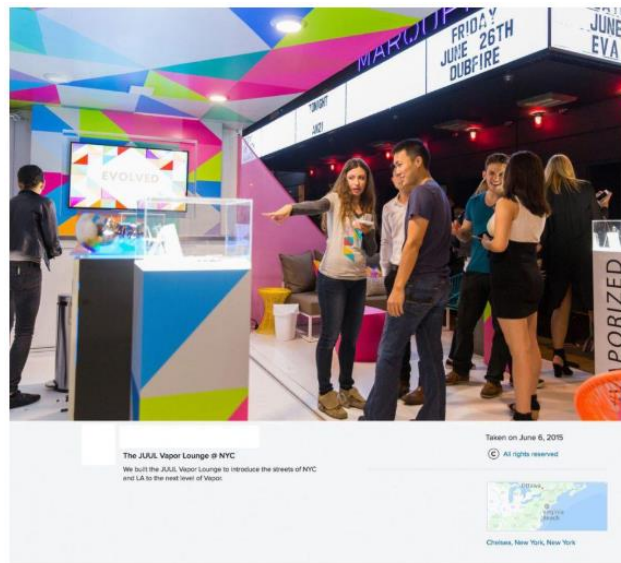
⁵⁵ *Id.* at 3.

⁵⁶ *Id.*

⁵⁷ Jackler Testimony, *supra* note 49 at 8.



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⁵⁸ Kathleen Chaykowski, *The Disturbing Focus of Juul's Early Marketing Campaigns*, Forbes (Nov. 16, 2018), <https://www.forbes.com/sites/kathleenchaykowski/2018/11/16/the-disturbing-focus-of-juuls-early-marketing-campaigns/#3da1e11b14f9>.

⁵⁹ *Id.*



Twitter



46. JUUL knew these images would be successful in achieving this result because it intentionally crafted them to mimic specific traditional tobacco advertisements that Big Tobacco had used to target teens. In fact, many of JUUL's ads are nearly identical to old cigarette ads that were designed to get teens to smoke. Like its Big Tobacco predecessors, the focus of Juul's initial marketing was on colorful ad campaigns using eye-catching designs and youth-oriented

imagery with themes of being cool, carefree, stylish, attractive, sexy, and popular—unusual themes and images if one’s objective is to promote an adult’s only smoking cessation device.



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47. JUUL used Big Tobacco’s advertising imagery, but coupled it with a modern, state-of-the-art marketing campaign designed to target youth. It relied heavily on social media, crafting a powerful online presence, which persists even after JUUL deleted its accounts in the face of mounting public scrutiny. JUUL was particularly active on Instagram, which is the most popular social media site among teens.⁶² JUUL cultivated hashtags, allowing it to blend its ads in

⁶⁰ *Virginia Slims vs Juul Advertisement*, Stanford U. Res. into the Impact of Tobacco Advert. (2015), http://tobacco.stanford.edu/tobacco_main/images-comp.php?token2=fm_tn_st328.php&token1=fm_tn_img10799.php&theme_file=fm_tn_mt035.php&theme_name=Cigs%20vs.%20eCigs&subtheme_name=Cigs%20vs%20eCigs%20JUUL.

⁶¹ Julia Belluz, *The Vape Company Juul Said It Doesn’t Target Teens. Its Early Ads Tell a Different Story*, Vox (Jan. 25, 2019), <https://www.vox.com/2019/1/25/18194953/vape-juul-e-cigarette-marketing>.

⁶² Jackler et al., *supra* note 39.

1 with wide range of user content, increasing exposure while concealing the commercial nature of
 2 the content.⁶³ JUUL then used hashtags to reinforce the themes it crafted in its product design,
 3 like #style, #technology, #smart, and #gadget. JUUL's hashtags attracted an enormous
 4 community of youthful posts on a wide array of subjects. According to Dr. Jackler, #Juul
 5 contains literally thousands of juvenile postings, and numerous Instagram hashtags contain the
 6 JUUL brand name.⁶⁴

8 48. Even after JUUL halted its own social media posts in November 2018, viral peer-
 9 to-peer promotion among teens insured continued corporate and product visibility among
 10 youth.⁶⁵ In fact, community posts about JUUL increased after JUUL itself quit social media in
 11 the Fall of 2018. Prior to November 2018, over a quarter of a million posts appeared. In the eight
 12 months *after* JUUL halted its promotional postings, the rate of community postings increased
 13 significantly, resulting in the number of posts doubling to over half a million.⁶⁶

15 49. JUUL also paid social media influencers to post photos of themselves with JUUL
 16 devices and to use the hashtags that it was cultivating.⁶⁷ JUUL entered a contract with an
 17 advertising agency specifically to identify and recruit social media influencers that had at least
 18 30,000 followers to, according to an internal JUUL email, "establish a network of creatives to
 19 leverage as loyalists" for the JUUL brand.⁶⁸ One such influencer was Christina Zayas, whom
 20 JUUL paid \$1,000 for just one blog post and one Instagram post in the Fall of 2017.

23 ⁶³ *Id.* at 23.

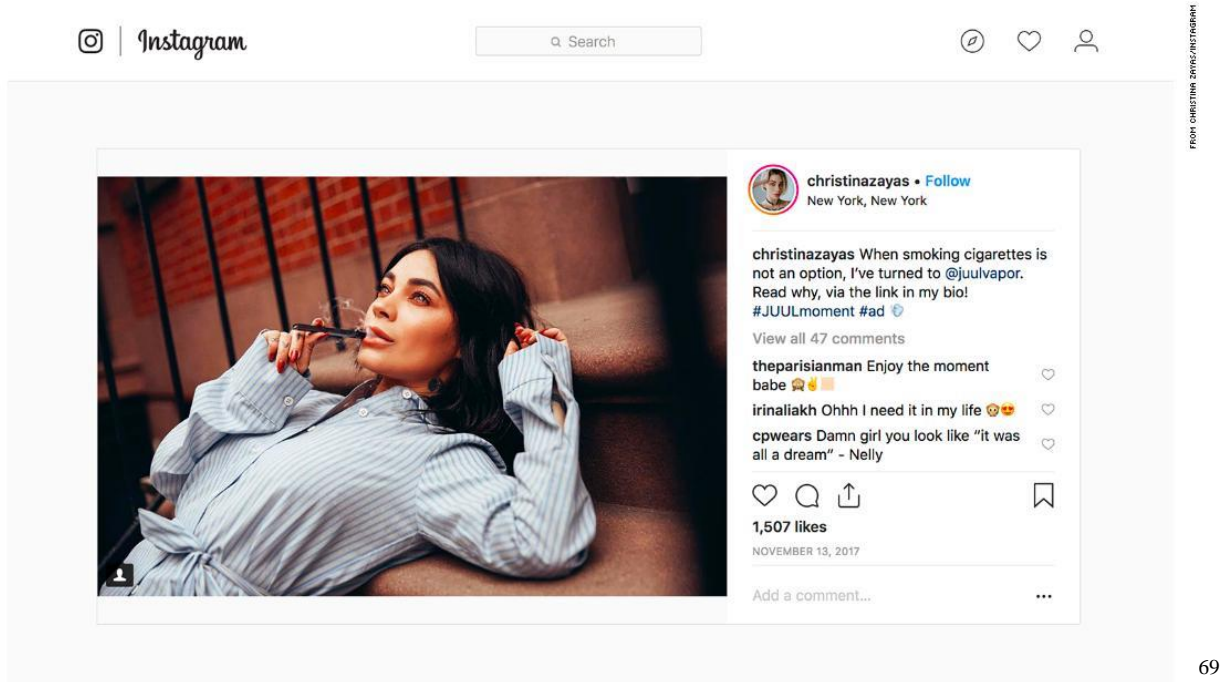
24 ⁶⁴ *Jackler Testimony*, *supra* note 49 at 10.

25 ⁶⁵ *Id.* at 11.

26 ⁶⁶ *Id.*

⁶⁷ Jackler et al., *supra* note 39.

⁶⁸ Kenrick Cai, *Juul Funded High Schools, Recruited Social Media Influencers To Reach Youth, House Panel Charges*, *Forbes* (July 25, 2019), <https://www.forbes.com/sites/kenrickcai/2019/07/25/juul-high-schools-influencers-reach-youth-house-investigation/#57735a4a33e2>.



50. JUUL instituted an “affiliate program” to recruit those who authored favorable reviews of its products by providing such reviewers with a 20% discount of purchases of JUUL products.⁷⁰ It even recruited JUUL users to act as part of their marketing team by asking users to “refer a friend and get a discount.”⁷¹

51. Such tactics masked what were in fact JUUL advertisements as user content, further increasing exposure and ultimately solidifying the company in teen pop culture as a form of cultural currency. JUUL’s strategy was so successful in embedding its products into pop culture that it entered the vernacular as a verb. The JUUL device and the term “juuling” are so pervasive that JUUL effectively eliminated not only competitors, but also any potentially alarming terms like “smoking” or “e-cigarette,” which could alert users to the true nature of the

⁶⁹ Michael Nedelman et al., *#Juul: How social media hyped nicotine for a new generation*, CNN Health (Dec. 19, 2018), <https://www.cnn.com/2018/12/17/health/juul-social-media-influencers/index.html>.

⁷⁰ *Id.* at 9-10.

⁷¹ *Id.* at 9.

1 device or activity. A recent study found that 63% of adolescent JUUL users did not know that
 2 JUULpods contain nicotine.⁷² This has worked to JUUL's advantage and was in fact a deliberate
 3 part of the its strategy. In the first year after its launch, not one of JUUL's 171 promotional
 4 emails said anything about nicotine content,⁷³ and it did not include nicotine warnings on the
 5 JUUL packaging until August 2018, when it was forced to do so.

6
 7 52. The design of JUUL's product is also acutely attractive to youth. Unlike most of
 8 its predecessors, JUUL looks nothing like a cigarette. Instead, JUUL is sleek and linear and
 9 seems like the latest tech invention. This is not surprising, given the founders' Silicon Valley
 10 product design education and training. JUUL co-founder Adam Bowen drew on his experience
 11 as a design engineer at Apple to make JUUL's design mimic technology children were already
 12 familiar with, like Apple's I-Phone.⁷⁴ This made JUULs look "more like a cool gadget and less
 13 like a drug delivery device. This wasn't smoking or vaping, this was JUULing."⁷⁵ The evocation
 14 of technology makes JUUL device familiar and desirable to the younger tech-savvy generation,
 15 particularly teenagers. According to 19-year-old Michelle Williams, "our Grandma's have
 16 iPhones now, normal kids have JUULs now. Because it looks so modern, we kind of trust
 17 modern stuff a little bit more so we're like, we can use it, we're not going to have any trouble
 18 with it because you can trust it."⁷⁶ 15 year old Sam Friedman agrees: "The tech aspect definitely
 19 helps people get introduced to it and then once they're introduced to it, they're staying, because
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24 ⁷² *Juul e-Cigarettes Gain Popularity Among youth, But Awareness of Nicotine Presence Remains Low*, Truth
 Initiative (Apr. 18, 2018), [https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-](https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf)
 25 [Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf](https://truthinitiative.org/sites/default/files/media/files/2019/03/JUUL-E-cigarettes-Gain-Popularity-Among-Youth-But-Awareness-of-Nicotine-Presence-Remains-Low.pdf).

26 ⁷³ Jackler et al., *supra* note 39 at 25.

⁷⁴ *How JUUL made nicotine go viral*, Vox (Aug. 10, 2018), <https://www.youtube.com/watch?v=AFOpKBuYok>.

⁷⁵ *Id.*

⁷⁶ *Id.*

1 they are conditioned to like all these different products. And then this is another product. And it's
 2 just another product. Until you're addicted to nicotine."⁷⁷

3 53. The JUUL device even has features reminiscent of youth-oriented tech culture
 4 and gaming, like "secret" features users can unlock, such as making the indicator light flash
 5 rainbow colors in "party mode." JUUL has been so successful in emulating technology that the
 6 small, rectangular devices are often mistaken for—or passed off as—flash drives.

7 54. The ability to conceal a JUUL is also part of the appeal for adolescents. The
 8 devices are small and slim, so they fit easily in a closed hand or a pocket. The ease and
 9 simplicity of use—there is nothing to light or unwrap, not even an on-off switch—also make it
 10 possible to covertly use a JUUL behind a turned back, which has become a trend in many
 11 schools. Finding new ways to hide the ever-concealable JUUL has spawned products designed
 12 just for that purpose, such as apparel that allows the wearer to use the device while it is
 13 concealed in the drawstring of a hoodie or the strap of a backpack.⁷⁸

14 55. JUUL also created special flavors that make its addictive, high-tech device even
 15 more attractive to adolescents. Tobacco companies have known for decades that flavored
 16 products are key to nicotine adoption by youth. A 1972 Brown & Williamson memorandum:
 17 "Youth Cigarette – New Concepts," specifically noted the "well known fact that teenagers like
 18 sweet products."⁷⁹ A 1979 Lorillard memorandum concluded that younger customers would be
 19 "attracted to products with 'less tobacco taste,'" and even proposed borrowing data from the "Life
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24 ⁷⁷ *Id.*

25 ⁷⁸ Evie Blad, 'Juuling' and Teenagers: 3 Things Principals and Teachers Need to Know, *Educ. Wk.* (July 18, 2018),
<https://www.edweek.org/ew/articles/2018/07/18/juuling-and-teenagers-3-things-principals-and.html>.

26 ⁷⁹ Marketing Innovations, Inc., *Brown & Williamson Tobacco Corp. Project Report: Youth Cigarette—New Concepts*, U.C.S.F. Truth Tobacco Industry Documents (Sept. 1972), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=hdpd0040>.

1 Savers” candy company to determine which flavors enjoyed the widest appeal among youth.⁸⁰
 2 According to 2004 data, 17 year old smokers were more than three times likely as those over 25
 3 to smoke flavored cigarettes and viewed flavored cigarettes as safer.⁸¹ For this reason, in 2009
 4 the FDA banned flavored cigarettes pursuant to its new authority under the Family Smoking
 5 Prevention and Tobacco Control Act of 2009. In announcing the ban, FDA Commissioner Dr.
 6 Margaret Hamburg declared that “flavored cigarettes are a gateway for many children and young
 7 adults to become regulator smokers.”⁸²

9 56. There is no reason to believe that flavors play any different role with respect to e-
 10 cigarettes and youth. In fact, a 2017 study of the cigarette flavor ban found that the ban was
 11 effective in lowering the number of smokers and the amount smoked by smokers, though it was
 12 associated with an increased use of menthol cigarettes (the only flavor still available).⁸³
 13 According to the Surgeon General, 85% of adolescents who use e-cigarettes use flavored
 14 varieties.⁸⁴ Studies also show that flavors motivate e-cigarette initiation among youth,⁸⁵ and that
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18 ⁸⁰ *Flavored Tobacco FAQs*, Students Working Against Tobacco, (citing, Sedgefield Idea Sessions 790606-790607.
 19 June 8, 1979. Bates No. 81513681/3691)
 20 <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (as of Oct. 16, 2019).

21 ⁸¹ Gardiner Harris, *Flavors Banned From Cigarettes to Deter Youth*, N.Y. Times (Sept. 22, 2009)
 22 <https://www.nytimes.com/2009/09/23/health/policy/23fda.html>.

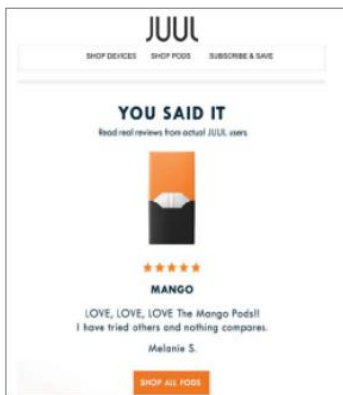
23 ⁸² *Id.*

24 ⁸³ Charles J. Courtemanche et al., *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*, American
 25 Journal of Preventive Medicine 52(5):e139 - e146 (2017), <https://tobacco.ucsf.edu/more-evidence-support-eliminating-flavors-reduce-youth-cigarette-and-e-cigarette-use>; MB. Harrell, et al., *Flavored e-cigarette use: Characterizing youth, young adult, and adult users*, Prev Med Rep. 2017; 5: 33–40 (Nov. 11, 2016), doi: 10.1016/j.pmedr.2016.11.001 PMID: PMC5121224.

26 ⁸⁴ *E-Cigarette Use Among Youth and Young Adults*, U.S. Dept. of Health and Human Services (2016),
<https://www.ctclearinghouse.org/Customer-Content/www/topics/2444-E-Cigarette-Use-Among-Youth-And-Young-Adults.pdf> (accessed Oct. 4, 2019).

⁸⁵ Karl Paul, *Flavored Vapes Lure Teens Into Smoking and Nicotine Addiction, Study Shows*, MarketWatch (Feb. 26, 2019), <https://www.marketwatch.com/story/flavored-vapes-lure-teens-into-smoking-and-nicotine-addiction-study-shows-2019-02-25>.

youth are much more likely to use flavored tobacco products than adults are.⁸⁶ In fact, in September 2019, the State of Michigan banned flavored e-cigarettes, a step the governor said was needed to protect young people from the potentially harmful effects of vaping, Governor Andrew Cuomo of New York announced that he would pursue emergency regulations to ban the sale of flavored e-cigarettes, and Governor Jay Inslee of Washington State ordered the Washington State Department of Health to ban all flavored vapor products.^{87, 88} Despite JUUL's claims that its target market is adult smokers, JUUL sold its product in flavors like Cool Mint, Crème Brulee, Fruit Medley, Cucumber, and Mango. These flavors were the reason countless adolescents started using JUUL products.



⁸⁶ A.C. Villanti et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study*, 53 Am. J. of Preventative Med. 139 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>.

⁸⁷ Jesse McKinley & Christina Goldbaum, *New York Moves to Ban Flavored E-Cigarettes by Emergency Order*, N.Y. Times (Sept. 15, 2019), <https://www.nytimes.com/2019/09/15/nyregion/vaping-ban-ny.html?smid=nytcore-ios-share>.

⁸⁸ Jay Inslee, *Executive Order 19-03: Addressing the Vaping Use Public Health Crisis*, State of Washington Office of the Governor (Sept. 27, 2019), https://www.governor.wa.gov/sites/default/files/19-03%20-%20Addressing%20the%20Vaping%20Public%20Health%20Crisis%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery.

JUUL @JUULvapor · 28 Aug 2017
 Do you brûlée? RT if you enjoy dessert without the spoon with our Creme Brulee
 #JUULpods bit.ly/2wvDk38



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57. The flavors pose dangers beyond luring young people into trying nicotine. Studies now show these sweet and fruity flavors present distinct additional health hazards. Researchers have found that some of the chemicals JUUL uses for flavor and perfume—particularly in the Crème Brulee flavor—contain relatively high levels of acetals.⁹⁰ Acetals are airway-irritating chemicals that may cause lung damage.⁹¹ Dr. Robert Jackler said that test results have shown that JUUL’s sweet and fruity flavors “contribute[] to the increasing body of evidence documenting toxicological effects of e-cig vapor.”⁹²

⁸⁹ Chaykowski, *supra* note 58.

⁹⁰ Susie Neilson, *Irritating Compounds Can Show Up in ‘Vape Juice’*, NPR (July 30, 2019), <https://www.npr.org/sections/health-shots/2019/07/30/746238009/irritating-compounds-discovered-in-vape-juice>.

⁹¹ *Id.*

⁹² *Id.*

58. It is clear that JUUL, like Philip Morris and RJR before it, targeted youth as a key business demographic. A recent study showed that 15-17 year-olds are *16 times* more likely to use JUUL than 25-34 year-olds.⁹³

59. JUUL was well aware from the beginning that its products would appeal to youth. A former JUUL manager, who spoke to *The New York Times* on the condition that his name not be used because he worried about facing the ire of the company, said that within months of JUUL's 2015 introduction, it became evident that teenagers were either buying JUULs online or finding others who made the purchases for them. Some people bought more JUUL kits on the company's website than they could individually use—sometimes 10 or more devices at a time. “First, they just knew it was being bought for resale,” said the former senior manager, who was briefed on the company's business strategy. “Then, when they saw the social media, in fall and winter of 2015, they suspected it was teens.”⁹⁴

60. This “suspicion” has been confirmed by the U.S. Surgeon General, who found that JUUL's Twitter account was being followed by adolescents and that 25% of those re-tweeting official JUUL tweets were under 18 years old.⁹⁵

C. Altria and E-Cigarettes

61. Altria entered the e-cigarette market a year before JUUL did. E-cigarettes have been sold in the United States since the early 2000s, but Big Tobacco did not make its first forays into that space until a decade later. Big Tobacco—including Altria—has been one of the biggest losers in the fight against smoking. Altria estimates that the cigarette industry declined

⁹³ D.M. Vallone et al., *Prevalence and correlates of Juul use among a national sample of youth and young adults*, Tobacco Control (Oct. 29, 2018), <http://dx.doi.org/10.1136/tobaccocontrol-2018-054693>.

⁹⁴ Matt Richtel & Sheila Kaplan, *Did Juul Lure Teenagers and Get ‘Customers for Life’?* N.Y. Times (Aug. 27, 2019), <https://www.nytimes.com/2018/08/27/science/juul-vaping-teen-marketing.html>.

⁹⁵ Adams, *supra* note 2.

1 by -4% in 2017 and by -4.5% in 2018. For 2019 through 2023, Altria estimated for the average
 2 annual U.S. cigarette industry volume declines is -4% to -5%.⁹⁶ Altria later revised this estimate
 3 in the second quarter of 2019 from 4-5% to 4-6%, in light of efforts to increase the legal age for
 4 cigarette smoking to 21.⁹⁷

5 62. In the face of these numbers, Altria turned to e-cigarettes, along with other “non-
 6 combustible products,” to “enhance” its business platform.⁹⁸ Altria boasted to shareholders that it
 7 “aspire[d] to be the U.S. leader in authorized, non-combustible, reduced-risk products.”⁹⁹

8 63. Altria entered the e-cigarette market with a cigarette-lookalike, or “cigalike,” style
 9 of e-cigarette, sold under the brand MarkTen. Following a phased roll-out of MarkTen in Indiana
 10 and Arizona in late 2013, Altria launched the MarkTen nationwide in 2014 with an aggressive
 11 marketing campaign, eclipsing the advertising expenditures for Imperial Tobacco’s e-vapor
 12 product, blu.¹⁰⁰

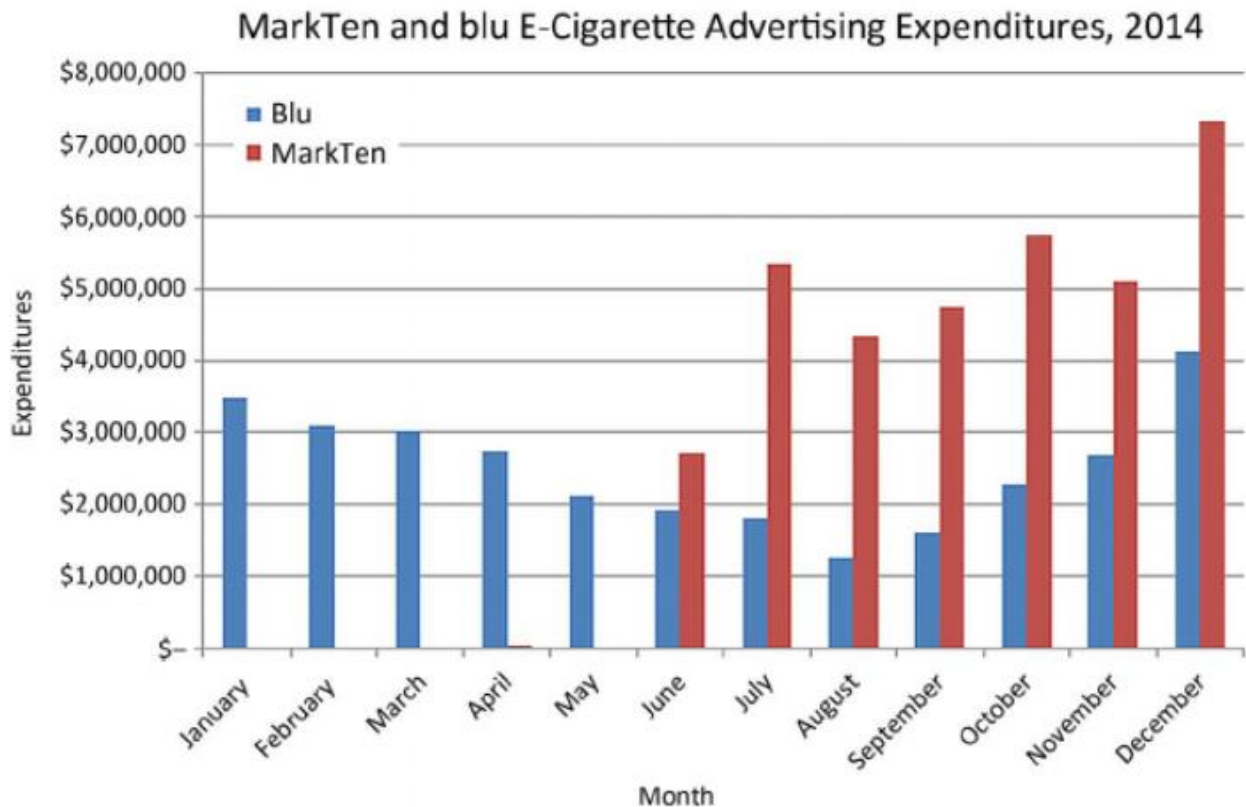
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22 ⁹⁶ *Presentation for Altria’s Fourth-Quarter 2018 Earnings Conference Call*, Altria (Jan. 31, 2019),
 23 <http://investor.altria.com/Cache/1001247877.PDF?O=PDF&T=&Y=&D=&FID=1001247877&iid=4087349>.

24 ⁹⁷ *Altria Shares Slide As Cigarette Sales Continue to Decline*, Tobacco Bus. (July 31, 2019),
 25 <https://tobaccobusiness.com/altria-shares-slide-as-cigarette-sales-continue-to-decline/>.

26 ⁹⁸ *Presentation for Altria’s Second-Quarter 2019 Earning Conference Call*, Altria (July 30, 2019),
 27 <http://investor.altria.com/Cache/1001255076.PDF?O=PDF&T=&Y=&D=&FID=1001255076&iid=4087349>.

⁹⁹ *Presentation for Annual Meeting of Shareholders*, Altria (May 17, 2018),
 28 <http://investor.altria.com/Cache/1500113050.PDF?O=PDF&T=&Y=&D=&FID=1500113050&iid=4087349>.

¹⁰⁰ Jennifer Cantrell et al., *Rapid increase in e-cigarette advertising spending as Altria’s MarkTen enters the marketplace*, Tobacco Control 25 (10) (2015), 1136/tobaccocontrol-2015-052532.



64. E-cigarette advertising spending for 2014 totaled \$88.1 million, a 52 percent increase from 2013.¹⁰¹ Of that \$88.1 million spent in 2014, nearly 40% of that was Altria's MarkTen campaign, at \$35 million.¹⁰² More than 18 million middle school and high school children were exposed to e-cigarette advertisements in 2014.¹⁰³ Approximately 1 in 2 middle school and high school age children saw advertisements for e-cigarettes in retail stores and almost 2 in 5 saw advertisements for e-cigarettes online.¹⁰⁴

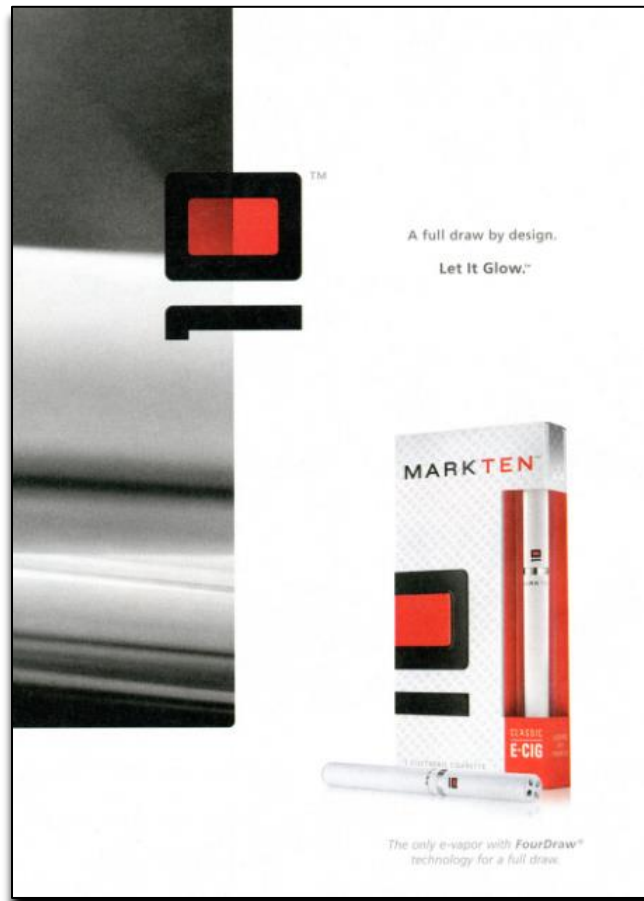
¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Carley Thompson, *How JUUL cornered the youth tobacco market and what you should know*, King County Public Health Insider (Aug. 6, 2018), <https://web.archive.org/web/20190329100340/https://publichealthinsider.com/2018/08/06/how-juul-cornered-the-youth-tobacco-market-and-what-you-should-know/>.

¹⁰⁴ *Id.*

65. Altria's MarkTen advertising tag line, "Let It Glow," was criticized by public health advocates for playing off Disney's popular children's movie "Frozen" and its hit song "Let it Go."¹⁰⁵



66. Even the then-president of R.J. Reynolds Vapor Company, Stephanie Cordisco, criticized Altria for irresponsible marketing, calling this tag line "terrible" and saying that the companies "running the most irresponsible campaigns are the ones who know better."¹⁰⁶ At the time, the president of the Campaign for Tobacco-Free Kids said that companies like Altria were

¹⁰⁵ Matt Richtel, *A Bolder Effort by Big Tobacco on E-Cigarettes*, N.Y. Times (June 17, 2014), <https://www.nytimes.com/2014/06/17/business/a-bolder-effort-by-big-tobacco-on-e-cigarettes.html>.

¹⁰⁶ *Id.*

using “exactly the same themes we saw work with kids in the U.S. for decades with cigarettes.”¹⁰⁷



67. Although free samples of tobacco products are prohibited under the terms of the Tobacco MSA as well as FDA regulations issued in 2010, Altria took advantage of the grey area in the regulation of e-cigarettes and distributed coupons for free sample nicotine cartridges as part of its MarkTen launch. (The FDA has since issued finalized guidance clarifying the scope of the ban on distributing free samples or coupons for e-cigarettes or components.)

¹⁰⁷ *Id.*



68. Altria also took full advantage of its distribution network, reaching 60,000 stores in a month.¹⁰⁸ In Arizona, for example, Altria's distribution network allowed MarkTen to achieve a 48% e-cigarette market share in just seven weeks after launch, according to then-CEO

¹⁰⁸ Melissa Kress, *MarkTen National Rollout Hits 60,000 Stores*, Convenience Store News (July 22, 2014), <https://csnews.com/markten-national-rollout-hits-60000-stores>.

1 Marty Barrington's statements on an earnings call.¹⁰⁹ Altria was clear in its intent to dominate
 2 the e-cigarette market as it has the traditional cigarette one: "We are the market leader today and
 3 we will continue to be," Barrington told investors.¹¹⁰

4 69. Altria began acquiring small companies in the vaping industry, starting in 2014
 5 with Green Smoke, Inc., whose e-cigarettes were also the "cigalike" style.¹¹¹ In 2016, Altria
 6 acquired a vape product called Cync, from Vape Forward.¹¹² Cync is a small vapor device that
 7 uses prefilled pods, similar to JUUL. It also made a minority investment in Avail Vapor, one of
 8 the largest vape store chains in the U.S., which also produces and sells its own branded e-liquids
 9 for so-called open-system devices, which are refillable.¹¹³

10 70. In February 2018, with JUUL dominating the e-cigarette market, Altria
 11 announced the national launch of a pod-based, "closed-tank" e-cigarette like the JUUL, which it
 12 branded as the MarkTen Elite: "a pod-based product with a premium, sleek battery design" and
 13 having the "convenience of prefilled, magnetic click pods." Altria had initially brought the Elite
 14 to market in 2016, telling investors that the product "offers a variety of flavorful liquids in a
 15 modern, discrete device format."¹¹⁴ The product was sold in flavors such as Hazelnut Cream,
 16 Apple Cider, and Strawberry Brulee.¹¹⁵ At an analyst conference in February 2018, former Altria
 17
 18
 19
 20
 21

109 *Id.*

110 *Id.*

111 Mike Esterl, *Altria To Launch MarkTen E-Cigarette Nationally*, Wall Street Journal (Feb. 19, 2014),
<https://www.wsj.com/articles/altria-to-launch-markten-e-cigarette-nationally-1392832378>.

112 Remarks by Jody Begley, 2017 Altria Investor Day (Nov. 2, 2017), http://media.corporate-ir.net/media_files/IROL/80/80855/2017InvestorDay/Remarks_and_Reconciliations.pdf

113 Timothy S. Donahue, *At the Forefront*, Tobacco Reporter (Dec. 1, 2017),
<https://www.tobaccoreporter.com/2017/12/at-the-forefront/>.

114 *Supra* note 112.

115 Angel Abcede, *Altria Introducing Closed Vapor System*, CSP Daily News (Feb. 27, 2018),
<https://www.cspdailynews.com/tobacco/altria-introducing-closed-vapor-system#page=0>.

chief Marty Barrington boasted that the Elite's pods held more than twice as much liquid as JUUL's.¹¹⁶



71. Altria quickly followed with another pod-based product, the Apex by MarkTen.



72. Because e-cigarettes are subject to more relaxed regulation than cigarettes, Altria was able to market its products in ways it could not have done for traditional tobacco products. Altria marketed its e-cigarettes in flavors that would appeal to youth: Strawberry Brulee, Apple Cider, Hazelnut Cream, Spiced Fruit, Piña Colada, Glacier Mint, and Mardi Gras (apparently a mixed berry flavor). Most of these flavors were marketed with the Elite and Apex products, Altria's "pod" e-cigarettes.

¹¹⁶ Marty Barrington, *Remarks by Marty Barrington, Altria Group, Inc.'s Chairman, CEO and President, and other members of Altria's senior management team*, US SEC (Feb.21, 2018), <https://www.sec.gov/Archives/edgar/data/764180/000076418018000020/exhibit992-2018cagnyremarks.htm>.

73. Altria’s push to gain the youth market gained the attention of the FDA. On September 12, 2018, the FDA sent a warning letter to Altria, requesting that Altria respond with a “detailed plan” to address and mitigate the widespread use of its e-cigarette products by minors.¹¹⁷ Due to the “epidemic rate of increase in youth use” of e-cigarettes, the FDA had recently conducted an “enforcement blitz” of retailers nationwide and confirmed that Altria’s MarkTen products were being sold to minors. The FDA did not mince words, telling Altria that “[t]his is unacceptable, both legally and as a matter of public health.” The FDA warned Altria that it has a responsibility to ensure minors are not getting access to its products and that it was “crucial” that manufacturers like Altria take steps to prevent youth from using its products. First and foremost, the FDA asked Altria to “take prompt action to address the rate of youth use of MarkTen products.” The FDA suggested that Altria could revise its current marketing practices, eliminate online sales, and remove flavored products from the market. The FDA’s expectation and motivation was clear: “steps must be taken to protect the nation’s young people.”

74. On October 25, 2018, Altria responded to the FDA, claiming to have “serious concerns” about youth access to e-vapor products.¹¹⁸ It admitted that the use of e-cigarettes by youth had risen to “epidemic levels.” In response, Altria agreed to remove its pod-based e-cigarettes from the market and stop selling any flavored traditional e-cigarettes other than tobacco, menthol, and mint. It acknowledged that “[b]ased on publicly-available information from FDA and others, we believe pod-based products significantly contribute to the rise in youth use of e-vapor products. We don’t believe our products are the issue, but we don’t want to risk

¹¹⁷ Scott Gottlieb, *Letter to Altria Client Services*, U.S. Food and Drug Admin. (Sept. 12, 2018), <https://www.fda.gov/media/119666/download>.

¹¹⁸ Howard A. Willard, *Letter to Scott Gottlieb, Commissioner*, Altria (Oct. 25, 2018), <http://www.altria.com/About-Altria/Federal-Regulation-of-Tobacco/Regulatory-Filing/FDAFilings/Altria-Response-to-FDA-E-vapor-October-25-2018.pdf>.

1 contributing to the problem.” Altria’s letter went on to disclaim a number of practices that it
 2 associated with marketing to youth—strategies that were key components of JUUL’s marketing
 3 strategy. Altria specifically identified the use of flavors that go beyond traditional tobacco
 4 flavors, digitally advertising on websites with a large percentage of youth visitors, using social
 5 media to promote the brand, allowing online purchases and promotional sign-ups without age
 6 verification, advertising e-cigarettes on billboards, advertising with models who appear to be
 7 under 25 years old, distributing branded merchandise, and paying celebrities or other third
 8 parties to market or use a particular brand’s e-cigarette. Altria also claimed to support “banning
 9 vaping in schools” in order to reduce “social access.” Altria ended the letter by committing to
 10 “reverse the current use trend among youth.”
 11

12 75. Less than two months later, Altria changed its tune. On December 20, 2018,
 13 Altria announced that it would be making a \$12.8 billion dollar investment in JUUL, the biggest
 14 equity investment in United States history.¹¹⁹ The deal gave Altria a 35% stake in JUUL.
 15

16 **D. JUUL and Altria Join Forces to Protect JUUL’s Market Share**

17 76. By the fall of 2018, JUUL was under intense scrutiny. A group of eleven United
 18 States senators wrote JUUL’s CEO, Kevin Burns, a letter in April 2018, declaring that the JUUL
 19 device and JUULpods “are undermining our nation’s efforts to reduce tobacco use among youth
 20 and putting an entire new generation of children at risk of nicotine addiction and other health
 21 consequences.”¹²⁰ Less than a week later, then FDA Commissioner Gottlieb announced a
 22
 23

24 ¹¹⁹ Cromwell Schubarth, *Vaping Unicorn Juul Opens Lab in Mountain View Amid Furor in S.F.*, Silicon Valley
 25 Bus. J. (Feb. 5, 2019), <https://www.bizjournals.com/sanjose/news/2019/02/05/juul-opens-lab-in-mountain-view.html>.

26 ¹²⁰ Richard Durbin et al., *Letter from 11 U.S. Senators, to Kevin Burns, CEO of JUUL Labs, Inc.*, United States Senate (April 18, 2018), <https://www.durbin.senate.gov/imo/media/doc/JUUL%20Letter%20-%20S%20IGNED.pdf>.

1 crackdown on retailers to limit youth access to e-cigarettes and enforcement actions against
 2 JUUL in particular.¹²¹ At the same time, the FDA sent JUUL a request for documents relating to
 3 marketing, product design, and public health impact.¹²² In July 2018, Massachusetts Attorney
 4 General Maura Healey announced an investigation into JUUL regarding marketing and sale to
 5 minors.¹²³ In September 2018, FDA Commissioner Gottlieb called youth vaping an “epidemic”
 6 and sent letters to JUUL, Altria, and other e-cigarette manufacturers demanding a plan to reduce
 7 youth use.¹²⁴ Then, in October 2018, as alleged above, the FDA raided JUUL’s headquarters and
 8 seized more than a thousand documents relating to JUUL’s sales and marketing practices.¹²⁵

10 77. On November 13, 2018, JUUL responded with an “Action Plan,” declaring its
 11 intent to stop selling certain flavors in brick-and-mortar stores, restrict purchases of those flavors
 12 on the JUUL website to adults age 21 and over, and shut down its social media accounts.¹²⁶

14 78. As the pressure on JUUL intensified, Altria stepped in to assist. Despite the clear
 15 criticism of JUUL’s conduct in its October 25th letter to the FDA, Altria announced its \$12.8
 16 billion investment in JUUL on December 20, 2018.¹²⁷ Altria characterized its investment as one

18 ¹²¹ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new enforcement actions and a*
 19 *Youth Tobacco Prevention Plan to stop youth use of, and access to, JUUL and other e-cigarettes*, U.S. Food and
 20 Drug Admin. (April 23, 2018), https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-enforcement-actions-and-youth-tobacco-prevention?utm_campaign=04242018_Statement_Youth%20Tobacco%20Prevention&utm_medium=email&utm_source=Eloqua.

21 ¹²² *Id.*

22 ¹²³ *AG Healey Announces Investigation into JUUL, Other Online E-Cigarette Retailers Over Marketing and Sale to*
 23 *Minors*, Mass.gov (July 24, 2018), <https://www.mass.gov/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing>.

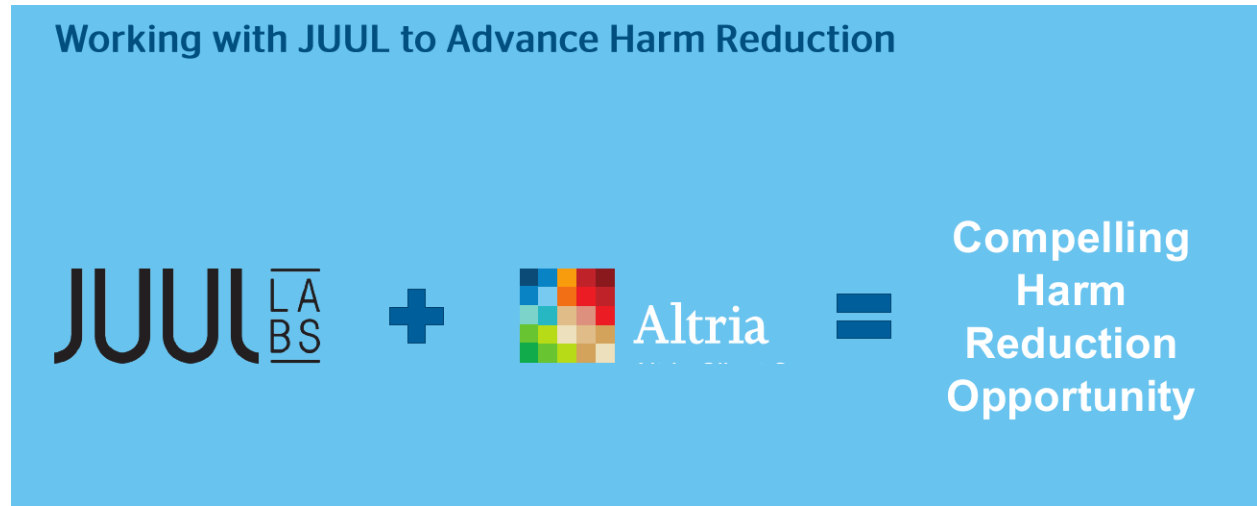
24 ¹²⁴ *Letters to Manufacturers Regarding Plans to Address Youth Access and Use*, U.S. Food & Drug Admin. (Sept.
 12, 2018), <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/ctp-letters-industry#youth-access>.

25 ¹²⁵ McGinley., *supra* note 20.

26 ¹²⁶ *Juul Labs Action Plan*, Juul Labs (Nov. 13, 2018), <https://newsroom.juul.com/juul-labs-action-plan/>.

¹²⁷ *Altria Makes \$12.8 Billion Minority Investment in JUUL to Accelerate Harm Reduction and Drive Growth*, BusinessWire (Dec. 20, 2018), <https://www.businesswire.com/news/home/20181220005318/en/Altria-12.8-Billion-Minority-Investment-JUUL-Accelerate> [hereinafter *Altria Minority Investment*].

intended to “accelerate harm reduction and drive growth.”¹²⁸ In an investor presentation in 2019, Altria described JUUL as having a “unique and compelling product” and included the following graphic:¹²⁹



79. But as the president of the Campaign for Tobacco-Free Kids observed upon announcement of the deal, “Altria has no interest in seriously reducing the number of people who smoke cigarettes.”¹³⁰

80. Altria would not have made such an investment if it did not intend to grow JUUL’s already enormous market even more. In fact, Altria said as much when announcing its investment, explaining that its investment in JUUL “enhances future growth prospects” and committing to applying “its logistics and distribution experience to help JUUL expand its reach and efficiency.”¹³¹ Since the deal was inked in December 2018, Altria’s actions have clearly helped JUUL maintain, if not expand, its market share—a market share that, based on Altria’s

¹²⁸ *Id.*

¹²⁹ Howard Willard, *2019 CAGNY Investor Presentation*, Altria (2019), <http://investor.altria.com/Cache/1500117496.PDF?O=PDF&T=&Y=&D=&FID=1500117496&iid=4087349>.

¹³⁰ Sheila Kaplan & Matt Richtel, *Juul Closes Deal with Tobacco Giant Altria*, N.Y. Times (Dec. 20, 2018), <https://www.nytimes.com/2018/12/20/health/juul-reaches-deal-with-tobacco-giant-altria.html>.

¹³¹ *Altria Minority Investment*, *supra* note 127.

own October 25, 2018 letter to the FDA, it believes was gained by employing marketing and advertising practices that contributed to youth vaping. Altria's Second Quarter 2019 Earnings Call reported that JUUL continued to grow in the first half of 2019, from a 33% category share in 2018 to 48% by the second quarter 2019. JUUL's expected revenue for 2019 is \$3.4 billion, nearly triple what it was in 2018.¹³²

81. From JUUL's beginnings, Altria had "followed Juul's journey rather closely."¹³³ Altria Chairman and CEO Howard Willard said that, for years, his company "watched Juul carefully to see if it had staying power."¹³⁴ Altria decided it did. As Willard explained: "During 2018, we concluded that JUUL had not only become the retail share leader in the U.S. e-vapor category, but that no other brand was close to it in share or future growth potential."¹³⁵ This was enough for Altria, one of the world's largest producers and marketers of tobacco products, to call JUUL's alleged smoking cessation device a "terrific product" and take a 35% stake in JUUL with its \$12.8 billion investment.¹³⁶ With this investment, Altria now owns both the number one youth initiation cigarette in the United States (the Marlboro cigarette) and the number one youth initiation e-cigarette in the United States, JUUL.

82. Notwithstanding Altria's statements to the FDA just two months previously about its concerns that JUUL was marketing and advertising its products in a way that contributed to the youth vaping epidemic, Willard stated that the deal would allow Altria to "work[] with JUUL

¹³² Olivia Zaleski & Ellen Huet, *Juul Expects Skyrocketing Sales of \$3.4 Billion, Despite Flavored Vape Restrictions*, Bloomberg (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/juul-expects-skyrocketing-sales-of-3-4-billion-despite-flavored-vape-ban>.

¹³³ Altria Group, Inc., Current Report (Form 8-K), Ex. 99.1 (Feb. 20, 2019), <https://www.sec.gov/Archives/edgar/data/764180/000076418019000018/exhibit991-2019cagnyremarks.htm> at 4.

¹³⁴ *Id.* at 4.

¹³⁵ *Id.* at 4.

¹³⁶ Angelica LaVito, *E-Cigarette Sales Are Booming Thanks to Juul*, CNBC (Aug. 21, 2018), <https://www.cnn.com/2018/08/21/e-cigarette-sales-are-booming-thanks-to-juul.html>.

1 to accelerate its mission.”¹³⁷ Altria committed to applying “its logistics and distribution
 2 experience to help JUUL expand its reach and efficiency” and offering JUUL the support of
 3 “Altria’s sales organization, which covers approximately 230,000 retail locations.” It also gave
 4 JUUL access to its “premier” retail shelf space while allowing it to continue to sell its flavored
 5 products online and provided JUUL with access to the databases of all of Altria’s companies.
 6 According to Willard, Altria was “excited to support JUUL’s highly-talented team and offer
 7 [Altria’s] best-in-class services to build on their tremendous success.” Altria admitted that
 8 minors were using JUUL products and that “underage use of e-cigarette product is a problem.”
 9 Nevertheless, that it believed its investment in JUUL “strengthens its financial profile and
 10 enhances future growth prospects.”
 11

12 83. Altria’s decision to prioritize profits over the dangers of youth vaping did not go
 13 unnoticed. On February 6, 2019, former FDA Commissioner Scott Gottlieb, sent Altria another
 14 letter “regarding representations” made by Altria acknowledging that it “has an obligation to take
 15 action to help address the mounting epidemic of youth addiction to tobacco products.”¹³⁸
 16 Commissioner Gottlieb told Altria that its recent purchase of a 35% ownership of JUUL
 17 “contradict[s] the commitments you made to the FDA.” The FDA demanded Altria be prepared
 18 to explain itself regarding its “plans to stop marketing e-cigarettes and to address the crisis of
 19 youth use of e-cigarettes.” Commissioner Gottlieb told Altria that “deeply concerning data”
 20 shows that “youth use of JUUL represents a significant proportion of overall use of e-cigarette
 21 products by children” and despite any steps the companies had taken to address the issue he
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26 ¹³⁷ *Altria Minority Investment*, *supra* note 127.

¹³⁸ Scott Gottlieb, *Letter to Howard Willard*, U.S. Food and Drug Admin. (Feb. 6, 2019),
<https://www.fda.gov/media/122589/download>.

1 “ha[d] no reason to believe these youth patterns of use are abating in the near term, and they
2 certainly do not appear to be reversing.”

3 84. The companies met with Gottlieb in March 2019 in a meeting the Commissioner
4 described as “difficult.”¹³⁹ Gottlieb “did not come away with any evidence that public health
5 concerns drove Altria’s decision to invest in JUUL, and instead sa[id] it looks like a business
6 decision.” Just a few weeks later, Gottlieb resigned his position.

7 85. As mentioned above, Altria’s investment in JUUL is not only a financial
8 contribution. Altria is working to actively help run JUUL’s operations and expand JUUL’s sales.
9 Altria’s investment brings legal and regulatory benefits to JUUL, by helping with patent
10 infringement battles and consumer health claims and helping to navigate the regulatory waters
11 and FDA pressure. Altria also brings lobbying muscle. In addition, Altria’s arrangement with
12 JUUL gives JUUL greater access to retail. JUUL has been in 90,000 US retail outlets, while
13 Altria reaches 230,000 US outlets. Altria brings its logistic and distribution experience.
14 Importantly, Altria gives JUUL access to shelf space—and not just shelf space, but space near
15 Altria products and retail displays. The arrangement allows JUUL’s tobacco and menthol-based
16 products to receive prominent placement alongside a top-rated brand of combustible cigarettes.
17

18 86. Altria is closely intertwined with JUUL. Not only does Altria’s investment also
19 allow it to appoint a third of JUUL’s board, but in the last month, JUUL’s CEO resigned to be
20 replaced by a career Altria executive, K.C. Crosthwaite. Crosthwaite had most recently served as
21 the vice president and chief growth officer of Altria Client Services LLC, overseeing the
22 company’s work, including digital marketing, packaging design & innovation, product
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26 ¹³⁹ Kate Rooney and Angelica LaVito, *Altria shares fall after FDA’s Gottlieb describes ‘difficult’ meeting on Juul*,
CNBC (Mar. 19, 2019), <https://www.cnbc.com/2019/03/19/altria-shares-fall-after-fdas-gottlieb-describes-difficult-meeting-on-juul.html>.

development, and safety, health, and environmental affairs. Crosthwaite is a career Altria executive who knows Big Tobacco's playbook all too well, having previously serving as the president and CEO of Phillip Morris USA, the vice president and general manager at Marlboro, and the vice president of strategy and business development of at Altria Client Services LLC.

87. This arrangement was profitable for both companies. JUUL employees received \$2 billion in bonuses, which, split among the Company's 1,500 employees, was approximately \$1.3 million per employee,¹⁴⁰ and Altria received millions of teen customers.

88. Since JUUL and Altria joined forces, JUUL's spending on lobbying has risen significantly. JUUL spent \$1.95 million on lobbying in the first two quarters of 2019, compared to \$1.64 million in all of 2018.¹⁴¹

89. JUUL claims its mission is to "improve the lives of the world's one billion adult smokers by eliminating cigarettes" and its advertising now encourages "making the switch."¹⁴²

90. In March 2019, JUUL's CEO Ken Burns wrote an op-ed piece declaring his agreement with HHS Secretary Azar and FDA Commissioner Gottlieb "that companies such as ours must step up with meaningful measures to limit access and appeal of vapor products to young people. And that's exactly what we've done, and we will do more to combat teen use in order to save the harm-reduction opportunity for the 34 million adult smokers in the United States."¹⁴³

¹⁴⁰ Olivia Zaleski, *Juul Employees to Get \$2 Billion Bonus in Altria Deal*, Bloomberg (Dec. 20, 2018), <https://www.bloomberg.com/news/articles/2018-12-20/juul-employees-said-to-get-2-billion-bonus-in-altria-deal>.

¹⁴¹ <https://thehill.com/business-a-lobbying/business-a-lobbying/456449-embattled-juul-seeks-allies-in-washington>

¹⁴² *Our Mission*, JUUL Labs (2019), <https://www.juul.com/mission-values>.

¹⁴³ <https://www.washingtonpost.com/opinions/2019/03/30/vape-makers-must-do-more-stop-kids-using-e-cigarettes/>

1 91. In September 2019, JUUL spokesperson Ted Kwong said the company agreed
2 with the need for “aggressive category-wide action on vapor products,” adding that it had taken
3 “the most aggressive actions of anyone in the industry to combat youth usage.”¹⁴⁴

4 92. Similarly, Altria’s CEO Howard Willard claimed that it invested in JUUL to help
5 “switching adult smokers” and “reduce harm.”¹⁴⁵ But JUUL does not have FDA approval as a
6 cessation device. This may be because, as one Company engineer said: “We don’t think a lot
7 about addiction here because we’re not trying to design a cessation product at all ... anything
8 about health is not on our mind.”¹⁴⁶

9 93. JUUL also does not have authority to claim that its product is healthier than
10 cigarettes. On September 9, 2019, the FDA warned JUUL that it has violated federal law by
11 making unauthorized representations that JUUL products are safer than cigarettes.¹⁴⁷

12 94. Moreover, even if JUUL were to obtain FDA approval as a legitimate smoking
13 cessation device, this has no impact—and certainly does not excuse—the Defendants’ conduct
14 that targets youth. Regardless of the potential health benefits to chain smokers from switching to
15 vaping from smoking, there is no benefit to kids from starting to vape.

16 **E. The Cost of JUUL’s Success**

17 95. In addition to designing its devices to be particularly attractive to youth, JUUL
18 designed its devices to be highly addictive. Unlike most other e-cigarettes, which use freebase
19 nicotine, JUUL uses patented nicotine salts from which it makes liquid nicotine cartridges, or
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24 ¹⁴⁴ <https://www.reuters.com/article/us-health-vaping-california/california-governor-acts-to-stem-epidemic-of-youth-vaping-idUSKBN1W12DD>

25 ¹⁴⁵ See Altria Minority Investment supra note 127.

26 ¹⁴⁶ Nitasha Tiku, *Startup Behind the Lambo of Vaporizers Just Launched an Intelligent e-Cigarette*, The Verge (Apr. 21, 2015), <https://www.theverge.com/2015/4/21/8458629/pax-labs-e-cigarette-juul>.

¹⁴⁷ Juul Labs, Inc. Warning Letter, U.S. Food and Drug Admin. (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>.

JUULpods.¹⁴⁸ Each JUULpod is, according to the Company, the equivalent of a pack of cigarettes. Each pod contains an alarming amount of nicotine, with up to 59 mg per ml—an amount that is roughly three times the amount of nicotine that can be sold to consumers in the European Union in a JUULpod. On top of ramping up the amount of nicotine, JUULpods enabled the Company to increase the rate and amount of nicotine delivery to the JUUL user, roughly doubling the concentration and tripling the delivery speed of nicotine of the average e-cigarette.¹⁴⁹

96. Big Tobacco spent decades manipulating nicotine in order to foster and maintain addiction in their customers. RJR developed and patented nicotine salt additives, including nicotine benzoate, to increase nicotine delivery in cigarette smoke. The objective was to provide an additional “nicotine kick” based on increased nicotine absorption associated with lower pH. JUUL uses this very same concept for its market-dominating e-cigarettes. The Company’s patent for its nicotine salts describes a process for combining benzoic acids with nicotine, a formulation that mimics the nicotine salt additive developed by RJR. JUUL’s use of benzoic acid and manipulation of pH affect the palatability of nicotine inhalation by reducing the “throat hit” that users experience when vaping. Indeed, this was the objective behind using nicotine salts (as compared to “free base nicotine” which has a higher pH). According to Ari Atkins, one of the inventors of the JUUL device, “[i]n the tobacco plant, there are these organic acids that naturally

¹⁴⁸ Rachel Becker, *Juul’s Nicotine Salts Are Dominating the Market – And Other Companies Want In*, The Verge (Nov. 21, 2018), <https://www.theverge.com/2018/11/21/18105969/juul-vaping-nicotine-salts-electronic-cigarettes-myblu-vuse-markten>.

¹⁴⁹ *How Much Nicotine is In Juul?*, Truth Initiative (Feb. 26, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-much-nicotine-juul>.

1 occur. And they help stabilize the nicotine in such a way that makes it . . . I’ve got to choose my
2 words carefully here: Appropriate for inhalation.”¹⁵⁰

3 97. Because smokers are already accustomed to a certain level of harshness and throat
4 hit, developing a product with low levels of harshness and minimal “throat hit” is only a critical
5 concern if your goal is to appeal to non-smokers, for example, youth. Minimizing the harshness
6 of nicotine also allows one to vape more frequently and for longer periods of time and masks the
7 amount of nicotine being delivered by eliminating the unpleasant throat hit normally associated
8 with large doses of nicotine. The harshness of free base nicotine makes prolonged vaping
9 difficult; the use of nicotine salts solves that problem. Put another way, the nicotine salt
10 technology behind JUULpods makes JUUL “smoke” highly potent yet hardly perceptible.
11

12 98. The increased nicotine exposure facilitated by the JUUL device has serious health
13 consequences. The ease of use and “smoothness” strip away external inhibitors and enable
14 extreme levels of unfettered use. Using the JUUL’s own calculations, consuming two JUULpods
15 in a day is the equivalent of consuming two to four packs of cigarettes a day. In this way, JUUL
16 has not only created a new generation of e-cigarette smokers, but has also pioneered a new style
17 of smoking—vaping—that is more nicotine-saturated than ever before.
18

19 99. Increased rates and duration of smoking lead to greater overall exposure to
20 nicotine. Nicotine is a neurotoxin. A highly addictive, psychoactive substance that targets brain
21 areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat
22 to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting
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¹⁵⁰ David Pierce, *This Might Just Be the First Great E-Cig*, Wired.com (Apr. 21, 2015),
<https://www.wired.com/2015/04/pax-juul-ecig/>.

consequences for cognitive ability, mental health, and even personality.”¹⁵¹ Animal researchers from the Yale University School of Medicine has found that vaping during adolescence can lead to long-term brain changes, like attention deficit hyperactivity disorder.¹⁵²

100. Studies also show that exposure to nicotine as a teen—even minimal exposure—biologically primes the brain for addiction and greatly increases likelihood of dependence on nicotine as well as other substances later in life.¹⁵³ In a study done on mice, even “very brief, low-dose exposure to nicotine in early adolescence increases the rewarding properties of other drugs, including alcohol, cocaine, methamphetamine—and these are long-term changes.”¹⁵⁴

101. JUUL’s use of flavors only amplifies its addictive qualities. Research done by Nii Addy, associate professor of psychiatry and cellular and molecular physiology at the Yale School of Medicine, found that “sweet flavors can make the nicotine more palatable . . . but also act in the brain to increase nicotine taking.”¹⁵⁵ This effective is especially troubling for teenage brains, which are more sensitive than adult brains to rewards. According to University of Pennsylvania psychologist Janet Audrain-McGovern, research shows that “if the first e-cigarette you used was flavored, then you’re more likely to go on and use an e-cigarette again.”¹⁵⁶

102. According to congressional testimony from Dr. Jonathan Winickoff, a professor of pediatrics at Harvard Medical School and the Director of Pediatric Research in the Tobacco

¹⁵¹ N.A. Goriounova & H.D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function*, Cold Spring Harbor Persp. in Med. 2(12) (Dec. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

¹⁵² Jon Hamilton, *How Vaping Nicotine Can Affect A Teenage Brain*, NPR (Oct. 10, 2019), <https://www.npr.org/sections/health-shots/2019/10/10/768588170/how-vaping-nicotine-can-affect-a-teenage-brain>.

¹⁵³ National Institute on Drug Abuse, *Principles of Adolescent Substance Use Disorder: A Research Based Guide* (2014), <https://www.drugabuse.gov/publications/principles-adolescent-substance-use-disorder-treatment-research-based-guide/introduction>.

¹⁵⁴ Hamilton, *supra* note 152.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

1 Research and Treatment Center, “[n]icotine addiction can take hold in only a few days,
 2 especially in the developing adolescent brain that is particularly vulnerable to addiction to
 3 nicotine. . . Many of my patients find Juul nearly impossible to stop. Nicotine withdrawal can
 4 cause headaches, insomnia, irritability, anxiety, and depression, and these withdrawal symptoms
 5 are one of the primary reasons a nicotine addiction is difficult to overcome.”¹⁵⁷ Moreover, there
 6 is a lack of effective tools to help adolescents overcome nicotine addiction: there is no good data
 7 on how to treat adolescents with e-cigarette dependence; there has not been enough research on
 8 youth tobacco cessation strategies; and most of the pharmacological therapies approved for
 9 adults have been shown to be ineffective or only marginally effective in adolescents.¹⁵⁸

11 103. Research in Massachusetts indicates that daily JUUL and other e-cigarette use is
 12 much more likely to continue than daily cigarette smoking. Out of the surveyed students who
 13 reported ever using cigarettes, only 17% indicated that they remained daily smokers. Out of the
 14 surveyed students who reported ever using e-cigarettes daily, 58% remained daily users. This
 15 data demonstrates both that e-cigarette use in teens is very persistent, a result consistent with the
 16 addictiveness of JUUL and the difficulty teens have in trying to quit.¹⁵⁹

18 104. E-cigarette use also puts adolescents at increased risk for cigarette smoking.
 19 Compared to adolescents who do not use e-cigarettes, those who do are 3.5 times more likely to
 20 begin smoking cigarettes.
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 22
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24 ¹⁵⁷ Jonathan Winickoff, *Testimony of Jonathan Winickoff before the U.S. House of Representatives Committee on*
 25 *Oversight and Reform Subcommittee on Economic and Consumer Policy*, U.S. House Committee on Oversight
 & Reform (July 24, 2019),
[https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf)
[Winickoff%20AAP%20Testimony.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.07.24%20Winickoff%20AAP%20Testimony.pdf) at 2 [hereinafter “Winickoff Testimony”].

26 ¹⁵⁸ *Id.* at 2.

¹⁵⁹ *Id.* at 2.

105. The dangerous and destructive nature of nicotine is no recent discovery. As a key ingredient in tobacco products, the drug and its deleterious effects have been the subject of scientific research and public health warnings for decades. Nicotine causes cardiovascular, reproductive, and immunosuppressive problems with devastating effects. Part of the reason the national decline in cigarette use in recent years was such a victory for public health was because there was a corresponding decline in teen exposure to nicotine. From 2000 to 2017, the smoking rate among high school students fell by 73%.¹⁶⁰

106. That trend has completely reversed. In 2018, more than one in four high school students in the United States reported using a tobacco product in the past thirty days, a dramatic increase from just one year before.¹⁶¹ But there was no increase in the use of cigarettes, cigars, or hookahs during that same time period.¹⁶² There was only increased use in a single tobacco product: e-cigarettes. While use of all other tobacco products continued to decrease as it had been for decades, e-cigarette use increased 78% in just one year.¹⁶³ This drastic reversal caused the CDC to describe youth vaping an “epidemic.”¹⁶⁴

¹⁶⁰ Matthew L. Myers, *Press Release: On 20th Anniversary of State Tobacco Settlement (the MSA), It's Time for Bold Action to Finish the Fight Against Tobacco*, Campaign for Tobacco-Free Kids (Nov. 26, 2018), https://www.tobaccofreekids.org/press-releases/2018_11_26_msa20.

¹⁶¹ *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, Ctrs. for Disease Control and Prevention (Feb. 11, 2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

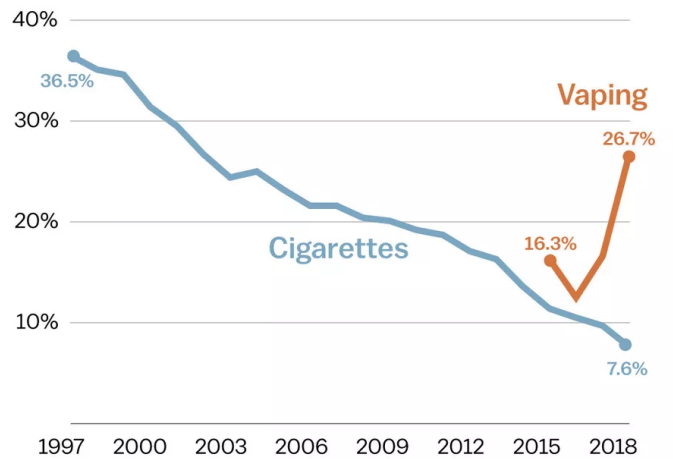
¹⁶² *Tobacco Use By Youth Is Rising: E-Cigarettes are the Main Reason*, Ctrs. for Disease Control & Prevention (Feb. 2019), <https://www.cdc.gov/vitalsigns/youth-tobacco-use/index.html>.

¹⁶³ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes*, U.S. Food & Drug Admin. (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

¹⁶⁴ Adams, *supra* note 2.

Teen vaping is surging

Trends in use of cigarettes and vape devices in the past 30 days among 12th-graders



Source: "National Adolescent Drug Trends in 2018," NEJM

Vox

107. The teen vaping epidemic of which JUUL is the architect has and will continue to have significant costs, both for individual users and for society. Nicotine addiction alone has significant health care costs, and these costs are exacerbated when adolescents are involved. Adolescent nicotine addiction leads to memory and attention problems, and increase chances of addiction later in life, all of which will continue to have long-lasting impacts on society.

108. Science is also beginning to show that e-cigarettes have the potential to cause even more, distinct health risks and costs. The very same liquids that enable e-cigarettes to deliver nicotine with such potency are proving to be increasingly dangerous. When heated, the vape liquid turns into aerosol, which may contain, in addition to nicotine, ultrafine toxic particles such as lead, additional chemicals, and volatile organic compounds.¹⁶⁵ These chemicals have the

¹⁶⁵ Lena H. Sun, *He went from hiking enthusiast to 'on death's door' within days. Doctors blamed vaping*, Wash. Post (Aug. 24, 2019), https://www.washingtonpost.com/health/one-mans-near-death-experience-with-vaping-related-lung-failure/2019/08/24/ca8ce42c-c5b4-11e9-9986-1fb3e4397be4_story.html?arc404=true.

1 potential to be deadly. Vaping is now linked to conditions like chronic obstructive pulmonary
 2 disease and seizures, and there were 193 possible cases of severe lung illness associated with e-
 3 cigarette product use in 22 states in less than two months in the summer of 2019 alone.¹⁶⁶ Public
 4 health officials reported the first known death from a vaping-related illness on August 23,
 5 2019.¹⁶⁷ On September 11, 2019, a teenager in King County became the first person in
 6 Washington State to be diagnosed with a severe lung disease associated with vaping.¹⁶⁸ By
 7 October 10, 2019, lung illness tied to vaping had killed 26 people, and there were over 1,300
 8 possible cases of serious illness reported from 49 states.¹⁶⁹ Only Alaska has not yet seen a case.
 9 16% of these patients have been under the age of 18.¹⁷⁰ In October 2019, a 17-year-old boy from
 10 the Bronx, New York became the first child to die from vaping-related respiratory illness.¹⁷¹

11
 12 109. Many teenagers are simply unaware of these risks, an ignorance that JUUL preys
 13 on. According to Dr. Winickoff, many of his patients believe JUULing is harmless:
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15 Counseling teens and preteens on e-cigarette use is challenging. Many of my
 16 patients have wildly incorrect beliefs about e-cigarettes. They know that cigarettes
 17 are dangerous, but assume that Juul—since it’s ubiquitous, comes in child-
 18 friendly flavors, and is marketed as a healthier alternative to smoking—must be
 19 harmless. I have to explain to kids that e-cigarettes do not have the same positive

20 ¹⁶⁶ CDC, FDA, *States Continue to Investigate Severe Pulmonary Disease Among People Who Use E-cigarettes*,
 Ctrs. for Disease Control & Prevention (Aug. 21, 2019), [https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-](https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html)
 21 [states-e-cigarettes.html](https://www.cdc.gov/media/releases/2019/s0821-cdc-fda-states-e-cigarettes.html).

22 ¹⁶⁷ Matt Richtel & Sheila Kaplan, *First Death in a Spate of Vaping Sicknesses Reported by Health Officials*, N.Y.
 Times (Aug. 23, 2019), <https://www.nytimes.com/2019/08/23/health/vaping-death-cdc.html>.

23 ¹⁶⁸ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to*
vaping, Seattle Times (Sept. 11, 2019), [https://www.seattletimes.com/seattle-news/health/king-county-teen-is-](https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/)
 24 [first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/](https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/).

25 ¹⁶⁹ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to*
vaping, Seattle Times (Sept. 11, 2019), [https://www.seattletimes.com/seattle-news/health/king-county-teen-is-](https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/)
 26 [first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/](https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/).

¹⁷⁰ Denise Grady, *Vaping Illnesses Top 1,000*, C.D.C., N.Y. Times (Oct. 3, 2019),
<https://www.nytimes.com/2019/10/03/health/vaping-illnesses-cdc.html>.

¹⁷¹ Ed Shanahan and Azi Paybarah, *Bronx Teenager’s Death Is the Youngest Vaping Fatality in U.S.*, N.Y. TIMES
 (Oct. 8, 2019), <https://www.nytimes.com/2019/10/08/nyregion/vaping-death.html>.

1 health benefits as the fruits whose flavor they copy. Even the term vapor calls to
2 mind harmless water vapor. There is no water in these products.

3 Winickoff Testimony at 1.

4 **F. JUUL's Remedial Measures**

5 110. In the face of increasing public scrutiny and pressure, JUUL has taken action to
6 curb underage use of its products, but its efforts have been ineffective at best and aggravating at
7 worse. After media and researchers brought JUUL's advertising tactics front and center, it
8 launched a new ad campaign focusing on former smokers and deleted social media accounts.
9 But, JUUL designed its social media campaign to subsist off of user-made content, which
10 remains unaffected by the absence of a JUUL-run account. In fact, as noted above, posts relating
11 to JUUL increased after it stopped its direct social advertising campaign.

12 111. JUUL's efforts to curb underage use through alterations to the product itself are
13 similarly either ineffective or potentially damaging. JUUL's approach to its flavored products
14 illustrates this point. In response to serious concerns about flavored products and youth vaping,
15 JUUL did the following: (1) it slightly modified the flavor names (i.e., "Cool Mint" is now
16 "Mint," "Crème Brulee" is now "Creme"); and (2) it limited the flavors carried by retail stores to
17 tobacco and mint, while continuing to offer the full range of flavors (including popular ones such
18 as Mango) online—a market which teens are particularly aware and adept at navigating. As Dr.
19 Winickoff testified before Congress:

20 [it is] completely false to suggest that mint is not an attractive flavor to children.
21 From candy canes to toothpaste, children are introduced to mint flavor from a
22 young age. Not only do children enjoy mint, but it has special properties that
23 make it an especially dangerous flavor for tobacco. Menthol's anesthetic
24 properties cool the throat, mask the harshness of nicotine, and make it easier for
25 children to start using and continue using tobacco products. The impact of mint
26 and menthol flavors on increasing youth tobacco addiction is well documented.

Winickoff Testimony at 3.

1 112. Similarly, restricting other flavors to online sales is of limited effectiveness.
 2 According to Dr. Winickoff, 80% of children get e-cigarettes from social sources, such as older
 3 friends, meaning that if the products are available for sale somewhere, children will get them.¹⁷²

4 **G. JUUL and Schools**

5 113. In addition to severe health consequences, widespread “JUULing” has placed
 6 severe burdens on society and schools in particular. It is not an overstatement to say that JUUL
 7 has changed the educational experience of students across the nation. As one vape shop manager
 8 told KOMO News, “It’s the new high school thing. Everyone’s got the JUUL.”¹⁷³

10 114. JUUL use has completely changed school bathrooms—now known as “the Juul
 11 room.”¹⁷⁴ As one high school student explained, “it’s just a cloud.”¹⁷⁵ The ubiquity of JUUL use
 12 in high school bathrooms has generated numerous online spoofs about “the juul room.”
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23 ¹⁷² *Id.*

24 ¹⁷³ *Juuling at School*, KOMO News (2019), <https://komonews.com/news/healthworks/dangerous-teen-trend-juuling-at-school>.

25 ¹⁷⁴ Moriah Balingit, *In the ‘Juul room’: E-cigarettes spawn a form of teen addiction that worries doctors, parents and schools*, Wash. Post (July 26, 2019), https://www.washingtonpost.com/local/education/helpless-to-the-draw-of-nicotine-doctors-parents-and-schools-grapple-with-teens-addicted-to-e-cigarettes/2019/07/25/e1e8ac9c-830a-11e9-933d-7501070ee669_story.html.

26 ¹⁷⁵ Greta Jochem, *Juuling in School: e-Cigarette Use Prevalent Among Local Youth*, Daily Hampshire Gazette (Nov. 13, 2018), <https://www.gazettenet.com/Juuling-in-Schools-21439655>.



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115. Kids have also coined the term “nic sick”—which, as one high school student explained to CBS News, “kinda seems like a really bad flu, like, just out of nowhere. Your face goes pale, you start throwing up and stuff, and you just feel horrible.”¹⁷⁷

116. Such rampant JUUL use has effectively added another category to teachers’ and school administrators’ job descriptions; many now receive special training to respond to the various problems that JUUL use presents, both in and out of the classroom. A national survey of middle schools and high schools found that 43.3% of schools have had to implement not only an

¹⁷⁶ *Juul Hashtag Meme*, Stanford U. Res. into the Impact of Tobacco Advert. (2018), http://tobacco.stanford.edu/tobacco_main/images_pods.php?token2=fm_pods_st681.php&token1=fm_pods_img37610.php&theme_file=fm_pods_mt068.php&theme_name=JUUL&subtheme_name=%23juul.

¹⁷⁷ *High school students say about 20% of their peers are vaping, some as young as 8th grade*, CBS News (Aug. 31, 2019), <https://www.cbsnews.com/news/high-school-students-say-about-20-of-their-peers-are-vaping-some-as-young-as-8th-grade/>.

e-cigarette policy but a JUUL-specific policy.¹⁷⁸ Participants in the survey reported multiple barriers to enforcing these policies, including the discreet appearance of the product, difficulty pinpointing the vapor or scent, and the addictive nature of the product.¹⁷⁹

117. Across the United States, schools have had to divert resources and administrators have had to go to extreme lengths to respond to the ever-growing number of students using JUULs on school grounds. According to the Truth Initiative, more than 40 percent of all teachers and administrators reported that their school uses camera surveillance near the school's restroom, almost half (46 percent) reported camera surveillance elsewhere in the school, and 23 percent reported using assigned teachers for restroom surveillance.¹⁸⁰ Some schools have responded by removing bathroom doors or even shutting bathrooms down,¹⁸¹ and schools have banned flash drives to avoid any confusion between flash drives and JUULs.¹⁸² Schools have also paid thousands of dollars to install special monitors to detect vaping, which they say is a small price to pay compared to the plumbing repairs otherwise spent as a result of students flushing vaping paraphernalia down toilets.¹⁸³ Other school districts have sought state grant money to create new

¹⁷⁸ Barbara A. Schillo, et al., *JUUL in School: Teacher and Administrator Awareness and Policies of E-Cigarettes and JUUL in U.S. Middle and High Schools*, Truth Initiative (Sep. 2019), https://journals.sagepub.com/doi/full/10.1177/1524839919868222?url_ver=Z39.88-2003&rfr_id=ori:rid=crossref.org&rfr_dat=cr_pub%3dpubmed.

¹⁷⁹ *Id.*

¹⁸⁰ *How are schools responding to JUUL and the youth e-cigarette epidemic?*, Truth Initiative, (Jan. 18, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/how-are-schools-responding-juul-and-youth-e-cigarette>.

¹⁸¹ Ana B. Ibarra, *The Juul's So Cool, Kids Smoke It In School*, Kaiser Health News (Mar. 26, 2018), <https://khn.org/news/the-juuls-so-cool-kids-smoke-it-in-school/>; Evie Blad, *'Juuling' Craze: Schools Scramble to Deal With Student Vaping*, Educ. Wk. (May 4, 2018), <https://www.edweek.org/ew/articles/2018/05/09/juuling-craze-schools-scramble-to-deal-with.html>.

¹⁸² Ana B. Ibarra, *Why 'juuling' has become a nightmare for school administrators*, Kaiser Health News (Mar. 26, 2018), <https://www.nbcnews.com/health/kids-health/why-juuling-has-become-nightmare-school-administrators-n860106>.

¹⁸³ Suzanne Monaghan, *Many schools installing vape detectors in bathrooms to discourage e-cigarette use*, KYW Newsradio (June 10, 2019), <https://kywnewsradio.radio.com/articles/news/many-schools-installing-vape-detectors-bathrooms-address-rise-e-cigarette-use>.

positions for tobacco prevention supervisors, who get phone alerts when vape smoke is detected in bathrooms.¹⁸⁴

118. Many schools have shifted their disciplinary policies in order to effectively address the JUUL epidemic. Rather than immediately suspending students for a first offense, school districts have created anti-vaping curricula which students are required to follow in sessions held outside of normal school hours, including on Saturdays.¹⁸⁵ Teachers prepare lessons and study materials for these sessions with information on the marketing and health dangers of vaping¹⁸⁶—extra work which requires teachers to work atypical hours early in the mornings and on weekends.¹⁸⁷ Some schools will increase their drug testing budget to include random nicotine tests for students before they join extracurricular activities.¹⁸⁸ Under this drug-testing protocol, first offenders will undergo drug and alcohol educational programming; second and third offenders will be forced to sit out from extracurriculars and attend substance abuse counseling.¹⁸⁹

119. JUUL actively sought to enter school campuses. The Subcommittee on Economic and Consumer Policy (“Subcommittee”) conducted a months-long investigation of JUUL, including reviewing tens of thousands of internal documents, and concluded that JUUL

¹⁸⁴ Lauren Katims, *California Fights Vaping in Schools*, U.S. News & World Report (Apr. 30, 2019), <https://www.usnews.com/news/best-states/articles/2019-04-30/california-focuses-on-education-to-curb-vaping-in-schools>.

¹⁸⁵ *Id.*

¹⁸⁶ Pat Eaton-Robb, *Discipline or treatment? Schools rethinking vaping response*, Concord Monitor (May 26, 2019), <https://www.concordmonitor.com/Discipline-or-treatment-Schools-rethinking-vaping-response-25822972>.

¹⁸⁷ Kathy Brown, *School trustees OK discipline for juuling/vaping offenses*, Gillette News Record (Aug. 29, 2019), https://www.gillette newsrecord.com/news/local/article_5ec28c96-fd48-5ae0-b267-4e417272d020.html.

¹⁸⁸ Christine Hauser, *This School District Has a Way to Combat Vaping: Random Nicotine Tests*, N.Y. Times (June 17, 2019), <https://www.nytimes.com/2019/06/17/us/nebraska-vaping-schools.html>.

¹⁸⁹ *Id.*

1 “deliberately targeted children in order to become the nation’s largest seller of e-cigarettes.”¹⁹⁰

2 The Subcommittee found that “(1) Juul deployed a sophisticated program to enter schools and
3 convey its messaging directly to teenage children; (2) Juul also targeted teenagers and children,
4 as young as eight years-old, in summer camps and public out-of-school programs; and (3) Juul
5 recruited thousands of online “influencers” to market to teens.”¹⁹¹
6

7 120. According to the Subcommittee, JUUL was willing to pay schools and
8 organizations hundreds of thousands of dollars to have more direct access to kids. Such attempts
9 included paying a Baltimore charter school organization \$134,000 to start a summer camp to
10 teach kids healthy lifestyles, for which JUUL itself would provide the curriculum; offering
11 schools \$10,000 to talk to students on campus; and giving the Police Activities League in
12 Richmond, California, \$90,000 to provide JUUL’s own vaping education program, “Moving
13 On,” to teenage students suspended for using cigarettes.¹⁹² Meanwhile, JUUL would collect data
14 about test scores, surveys, and activity logs about the students.
15

16 121. Among the more egregious incidents reported by the Subcommittee was a July
17 24, 2019 presentation in which no parents or teachers were in the room for the presentation, the
18 message conveyed was that the JUUL product was “totally safe,” and the presenter even
19 demonstrated to the students how to use a JUUL.¹⁹³ The school was presumably paid for this
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23 ¹⁹⁰Supplemental Memorandum for Hearing on ‘Examining JUUL’s Role in the Youth Nicotine Epidemic: Parts I &
24 II’ from Committee Staff, to Democratic Members of the Subcommittee on Economic and Consumer Policy (July
25 25, 2019), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Supplemental%20Memo.pdf>.
[hereinafter “JUUL’s Role in Youth Nicotine Epidemic”]

26 ¹⁹¹ *Id.* at 1.

¹⁹² Sheila Kaplan, *Juul Targeted Schools and Youth Camps*, House Panel on Vaping Claims, N.Y. Times (July 25,
2019), <https://www.nytimes.com/2019/07/25/health/juul-teens-vaping.html>.

¹⁹³ *JUUL’s Role in Youth Nicotine Epidemic*, *supra* note 190.

1 meeting, which was marketed to the school as an anti-smoking initiative. A JUUL spokesman
 2 said JUUL is no longer funding such programs.¹⁹⁴

3 **H. Impact on King County**

4 122. In Washington, although the percentage of teens reporting cigarette smoking in
 5 2018 is less than half of what it was a decade ago, e-cigarette use increased significantly between
 6 2016 and 2018.¹⁹⁵ Specifically, use of vapor products among 12th grade students increased from
 7 20% in 2016 to nearly 30% in 2018.¹⁹⁶ Washington students also do not understand the dangers
 8 of vaping. According to a statewide survey of Washington students, “only about a third of 10th
 9 graders thought vaping was harmful.”¹⁹⁷

11 123. On September 27, 2019, Governor Jay Inslee ordered the Washington State
 12 Department of Health to ban all flavored vaping products.¹⁹⁸ Governor Inslee agreed with the
 13 FDA: “e-cigarette use among youth has reached epidemic proportions and this epidemic presents
 14 a clear and present danger.”¹⁹⁹ He explained that “vapor products containing nicotine are the
 15 most commonly used nicotine products in Washington among youth,” that “vapor product use
 16 increased dramatically among 8th, 10th, and 12th graders between 2016 and 2018” and that “an
 17 overwhelming majority” of youth who use vape using flavored products.”²⁰⁰ Inslee found that
 18 “the appeal of flavored nicotine products, as well as advertising and promotion activities targeted
 19
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22 ¹⁹⁴ *Id.*

23 ¹⁹⁵ Amy Blondin and Kristen Maki, *Alcohol use remains at an all time low while vaping use increases among*
 24 *Washington youth*, Washington State Health Youth Survey (Mar. 18, 2019),
[http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Fin](http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Final.pdf)
[al.pdf](http://www.askhys.net/Docs/Healthy%20Youth%20Survey%20Substance%20Use%20Press%20Release%20Final.pdf).

25 ¹⁹⁶ Inslee, *supra* note 88.

26 ¹⁹⁷ Blondin & Maki, *supra* note 195.

¹⁹⁸ Inslee, *supra* note 88.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

1 at youth, are contributing to the dramatic increase in youth vaping.”²⁰¹ When announcing his
 2 executive order, Inslee recognized that flavored vaping products are attractive to children, saying
 3 flavors such as bubble gum and cinnamon exist for “one reason and one reason only - make it
 4 more appealing to young children.”

5 124. The Washington State Board of Health agreed. On October 9, 2019, the
 6 Washington State Board of Health approved an emergency ban on the sale of flavored vaping
 7 products.²⁰² Inslee welcomed the decision, saying that it was necessary to “act on this very
 8 important public health issue” to “protect the health of Washingtonians, especially young people.
 9 These emergency rules will help protect public health and save lives.”

10 125. In response to Washington’s ban, the American Heart Association issued a
 11 statement from Seattle’s Dr. Mary Ann Baumann supporting the ban: “As youth use is increasing
 12 at an alarming rate and recent research finds that young people are especially influenced by
 13 flavors in e-cigarette products, emergency action was vital.”

14 126. King County has been directly affected by this surge in youth vaping caused by
 15 the Defendants’ misconduct. King County spends substantial sums and resources in addressing
 16 and responding to the youth vaping epidemic.

17 127. King County is one of the largest counties in the country, with approximately 2.23
 18 million residents.²⁰³ It is also the third-fastest growing county in the last decade, and in 2018, it

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24 ²⁰¹ *Id.*

25 ²⁰² King 5 Staff, *Washington Board of Health bans flavored vaping products*, King 5 News, (Oct. 9, 2019)
 26 <https://www.king5.com/article/news/local/washington-board-of-health-bans-flavored-vaping-products/281-ddad5104-7d18-4f96-a2c5-6ff1ed162428>.

²⁰³ *Quick Facts: King County, Washington*, United States Census Bureau,
<https://www.census.gov/quickfacts/fact/map/kingcountywashington/PST045216> (accessed Oct. 11, 2019).

1 recorded the sixth largest increase in residents of all U.S. counties.²⁰⁴ In fact, since 2000, King
 2 County's population has grown by almost 500,000 people.²⁰⁵

3 128. King County contains 39 cities, the largest number of any county in Washington
 4 State, including Seattle, Bellevue, Kirkland, Kent, Snoqualmie, and Burien—six of the fastest
 5 growing cities in the state. From 2017 to 2018, Seattle was the second-fastest growing city in the
 6 United States.²⁰⁶

7
 8 129. In King County, as in many other communities in the United States, “youth vapor
 9 use has reached epidemic levels.”²⁰⁷ The latest data shows that 25% of King County high school
 10 seniors reported vaping in the past 30 days.²⁰⁸ From 2016 to 2018, the number of King County
 11 youth who vape surged 110% for 8th graders, 82% for 10th graders, and 50% for 12th graders.²⁰⁹

12
 13 130. On September 11, 2019, a teenager in King County became the first person in
 14 Washington State to be diagnosed with a severe lung disease associated with vaping, requiring
 15 him to be hospitalized.²¹⁰ In response, King County Executive Dow Constantine called for swift
 16
 17
 18

19 ²⁰⁴ King 5 Staff, *King County see smallest population growth in 10 years*, King 5 News (Apr. 18, 2019),
 20 <https://www.king5.com/article/news/king-county-sees-smallest-population-growth-in-10-years/281-56ecf492-e2ff-4a12-a020-9381f8e86da0> (reporting that even with the smallest growth in a decade, almost 32,000 people moved
 21 to King County in 2018, making it one of the fastest growing counties in the nation).

22 ²⁰⁵ *Total King County Population, 2000-2010*, King County Open Data, <https://data.kingcounty.gov/County-Operations/Total-King-County-Population-2000-2010/xa7q-is96/data> (accessed Oct. 11, 2018).

23 ²⁰⁶ Gene Balk, *Big-city growth slows across U.S. – but Seattle still ranks No. 2 in 2018*, Seattle Times (May 23,
 24 2018) <https://www.seattletimes.com/seattle-news/data/big-city-growth-slows-across-u-s-but-seattle-still-ranks-no-2-in-2018/>.

25 ²⁰⁷ Seattle & King County Department of Public Health, *Vapor & E-Cigarette Use in Seattle & King County 1*,
 26 <https://www.kingcounty.gov/depts/health/tobacco/~media/depts/health/tobacco-vapor/documents/vaping-infographic.ashx> (accessed Oct. 11, 2019).

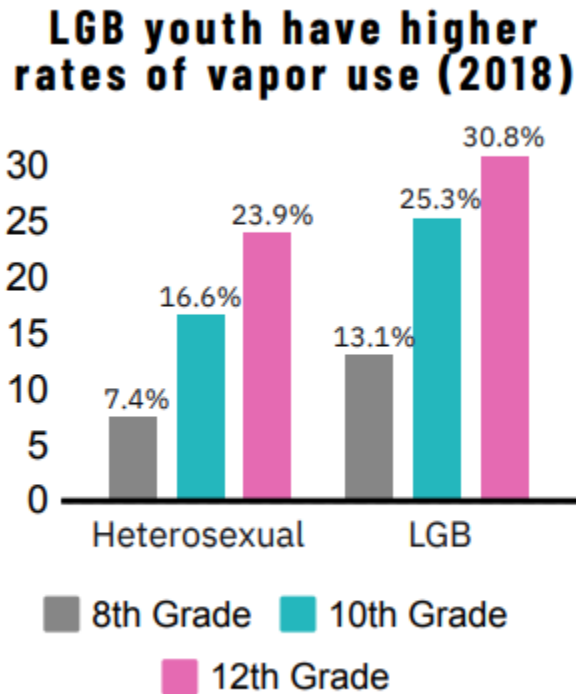
²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Nicole Brodeur & Ryan Blethen, *King County teen is first in state diagnosed with severe lung disease related to vaping*, Seattle Times (Sept. 11, 2019), <https://www.seattletimes.com/seattle-news/health/king-county-teen-is-first-in-state-diagnosed-with-severe-lung-disease-related-to-vaping/>.

1 action to tackle the risks that vaping nicotine and other products pose to public health, especially
 2 young people.²¹¹

3 131. The vaping epidemic in King County is especially prevalent in vulnerable
 4 populations of youth, including lesbian, gay, and bisexual youth:
 5



212

18 132. This dramatic increase in youth rates is directly tied to Defendants conduct; As
 19 the King County Public Health Insider put it: “Youth are using e-cigarettes more than any other
 20 tobacco products, and when they do, they’re probably using JUUL.”²¹³ In an interview from
 21

22
 23
 24 ²¹¹ Dow Constantine, *Executive Constantine on urgent action needed to address youth vaping*, King County (Sept. 11, 2019) <https://kingcounty.gov/elected/executive/constantine/news/release/2019/September/11-vaping-regulations.aspx>.

25 ²¹² Seattle & King County Department of Public Health, *supra* note 207.

26 ²¹³ Carley Thompson, *How JUUL cornered the youth tobacco market and what you should know*, King County Public Health Insider (Aug. 6, 2018), <https://web.archive.org/web/20190329100340/https://publichealthinsider.com/2018/08/06/how-juul-cornered-the-youth-tobacco-market-and-what-you-should-know/>.

2018, Lisa Davidson, Prevention and Intervention Manager at Seattle Public Schools in King County described the impact JUUL is having on Seattle Public Schools:

We even had a few instances of students as young as 5th grade vaping at school this year. Students have been found vaping on campus, in bathrooms and hallways, and in parking lots. Students report not knowing that vaping is illegal on campus or for people under age 18. Students also report not knowing the potential negative effects vaping may have on their health.²¹⁴

133. In response to this crisis, the King County Board of Health found that electronic smoking devices like JUULs “presents a threat to the public health.”²¹⁵ The Board of Health recognized that these products “have a high appeal to youth due to their high tech design and child-friendly flavors” and that they “present a substantial risk of nicotine addiction and resultant harm to the public health and safety.”²¹⁶ King County regulations prohibit anyone from providing an vaping product to a minor and prohibit certain practices that are likely to allow minors to get access to these products, such as giving away free samples or selling vaping products from vending machines.²¹⁷

134. King County has spent time and resources publishing and spreading information about the dangers of youth vaping in an attempt to curb the youth vaping epidemic.

135. For example, King County conducted research and developed an infographic to warn the community about the dangers of youth vaping. King County recognized that “pod-based units like JUUL are popular among youth” and “contain extremely high levels of nicotine.”²¹⁸ King County understands that “kids are especially vulnerable to the harmful and

²¹⁴ *Id.*

²¹⁵ *Tobacco Products, Electronic Smoking Devices and Unapproved Nicotine Delivery Products*, King County Board of Health Regulation (Feb. 15, 2019), <https://www.kingcounty.gov/depts/health/tobacco/~media/depts/health/board-of-health/documents/code/BOH-Code-Title-19.ashx> at 19.12.030.

²¹⁶ *Id.*

²¹⁷ *Id.* at 19.12.050-19.12.090.

²¹⁸ Seattle & King County Department of Public Health, *supra* note 207.

1 addictive effects of nicotine. Early nicotine addiction can harm brain development and cause
 2 problems with attention, memory and impulse control and potentially increase the risk for
 3 addiction to other substances.”²¹⁹

4 136. King County has also disseminated resources for teachers, signs and infographics
 5 about the rates and dangers of youth vaping and flavored tobacco products, and offered tobacco
 6 cessation training free of charge. In addition, King County’s Department of Public Health has
 7 conducted interviews and published a series of articles about JUUL, the dangers of vaping, and
 8 what parents can do to help.²²⁰

10 137. Fully addressing the harms to King County and counties across the nation that
 11 were caused by Defendants’ conduct will require a comprehensive approach, one that includes
 12 addiction counselors trained in youth vaping, prevention education that includes information
 13 about the health consequences of JUUL use on adolescents’ bodies and minds, developing
 14 refusal skills, and addiction treatment options. Without the resources to fund these measures,
 15 King County and others similarly situated will continue to be harmed by the ongoing
 16 consequences of Defendants’ conduct.
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 19
 20
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23 ²¹⁹ *Id.*

24 ²²⁰ Carley Thompson, *How JUUL cornered the youth tobacco market and what you should know*, King County
 25 Public Health Insider (Aug. 6, 2018), <https://web.archive.org/web/20190329100340/https://publichealthinsider.com/2018/08/06/how-juul-cornered-the-youth-tobacco-market-and-what-you-should-know/>; Carly
 26 Thompson, *Tips from teachers: How to talk to your kids about vaping*, King County Public Health Insider (Aug. 14, 2018), <https://web.archive.org/web/20190806150422/https://publichealthinsider.com/2018/08/14/tips-from-teachers-how-to-talk-to-your-kids-about-vaping/>; Carly Thompson, *Not just water vapor: Why e-cigarettes are so dangerous*, King County Public Health Insider (Aug. 28, 2018), <https://web.archive.org/web/20190806151229/https://publichealthinsider.com/2018/08/28/not-just-water-vapor-why-e-cigarettes-are-so-dangerous/>.

V. CLASS ACTION ALLEGATIONS

A. Class Definitions

138. Pursuant to provisions of the Federal Rules of Civil Procedure (“Rule”) 23(a), (b)(2), and (b)(3), Plaintiff brings this action on its own behalf and on behalf of a proposed national class of other similarly situated counties (collectively, “the Nationwide Class”), defined as follows:

Nationwide Class: All counties in the United States and its territories that have spent resources addressing, or whose property has been affected by, youth use of JUUL products.

139. In addition to the Nationwide Class and pursuant to Rule 23(c)(5), Plaintiff seeks to represent the following Washington State Sub-Class as well as any subclasses or issue classes Plaintiff may propose an/or the Court may designate at the time of class certification:

Washington Sub-Class: All counties in Washington State that have spent resources addressing, or whose property has been affected by, youth use of JUUL products.

140. Excluded from the Classes are Defendants and their subsidiaries and affiliates; all counties who make a timely election to be excluded from the Classes; and the Judge to whom this case is assigned and his or her immediate family. Plaintiff reserves the right to revise the definitions of the Classes based upon information learned through discovery.

141. Certification of Plaintiff’s claims for classwide treatment is appropriate because Plaintiff can prove the elements of its claims regarding liability and entitlement to injunctive relief, abatement, and damages on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

142. This action has been brought and may be properly maintained on behalf of the Classes proposed herein under Federal Rule of Civil Procedure 23.

1 143. Plaintiff reserves the right to modify the definition of the Classes or add
 2 Sub-Classes prior to class certification.

3 **VI. CLASS CERTIFICATION REQUIREMENTS: FEDERAL RULE OF CIVIL**
 4 **PROCEDURE 23**

5 144. **Numerosity: Rule 23(a)(1).** The members of the Classes are so numerous and
 6 geographically dispersed that individual joinder of all members of the Classes is impracticable.
 7 Plaintiff do not know the exact size of the Classes, but there are over 3,000 counties in the
 8 United States and 39 counties in Washington State alone. Members of the Classes may be
 9 notified of the pendency of this action by recognized, Court-approved notice dissemination
 10 methods, which may include U.S. mail, electronic mail, Internet postings, social media, and/or
 11 published notice.
 12

13 145. **Commonality and Predominance: Rules 23(a)(2) and 23(b)(3).** This action
 14 involves significant common questions of law and fact, which predominate over any questions
 15 affecting individual members of the Classes, including, but not limited to:

- 16 A. Whether Defendants engaged in the conduct alleged herein;
- 17 B. Whether Defendants created a public nuisance;
- 18 C. Whether Defendants unlawfully contributed to a public nuisance;
- 19 D. Whether the rise in youth vaping and nicotine addiction was substantially
- 20 caused by Defendants' conduct;
- 21 E. Whether Defendants' conduct injures or endangers the health and safety of
- 22 counties and their communities nationwide;
- 23 F. Whether Defendants' conduct injures or endangers the health and safety of
- 24 Washington counties and their communities;
- 25 G. Whether Defendants unlawfully marketed JUUL products to minors;
- 26 H. Whether Defendants continued to market JUUL products to minors after it
 was on notice that JUUL products were being used in schools;

1 I. Whether Defendants engaged in a pattern of racketeering;

2 J. Whether the JUUL Enterprise, in whole or in part, has substantially
3 affected interstate or intrastate commerce;

4 K. Whether Plaintiff and members of the Classes are entitled to abatement;
5 and

6 L. Whether Plaintiff and members of the Classes are entitled to equitable and
7 injunctive relief.

8 146. **Typicality: Rule 23(a)(3).** Plaintiff's claims are typical of the claims of the
9 members of the Classes whom it seeks to represent under Federal Rule of Civil Procedure
10 23(a)(3), because King County and members of the Classes all had to expend resources
11 addressing youth JUUL use. Plaintiff and the other members of the Classes suffered damages as
12 a direct proximate result of the same wrongful practices by Defendants. Plaintiff's claims arise
13 from the same practices and courses of conduct that give rise to the claims of the other members
14 of the Classes. Plaintiff's claims are based upon the same legal theories as the claims of the other
15 members of the Classes.

16 147. **Adequacy: Rule 23(a)(4).** Plaintiff will fairly and adequately represent and
17 protect the interests of the members of the Classes as required by Federal Rule of Civil
18 Procedure 23(a)(4). Plaintiff has retained counsel competent and experienced in complex class
19 action litigation, including MDL litigation and other public nuisance litigation. Plaintiff intends
20 to prosecute this action vigorously. Neither Plaintiff nor its counsel has interests that conflict
21 with the interests of the other members of the Classes. Therefore, the interests of the members of
22 the Classes will be fairly and adequately protected.
23

24 148. **Declaratory and Injunctive Relief: Rule 23(b)(2).** Defendants have acted or
25 refused to act on grounds generally applicable to Plaintiff and the other members of the Classes,
26

1 thereby making appropriate final injunctive relief and declaratory relief, as described below, with
 2 respect to the Classes as a whole.

3 149. **Superiority: Rule 23(b)(3).** A class action is superior to any other available
 4 means for the fair and efficient adjudication of this controversy, and no unusual difficulties are
 5 likely to be encountered in the management of this class action. The damages or other financial
 6 detriment suffered by Plaintiff and the other members of the Classes are relatively small
 7 compared to the burden and expense that would be required to individually litigate their claims
 8 against Defendants, so it would be impracticable for members of the Classes to individually seek
 9 redress for Defendants' wrongful conduct.
 10

11 150. Even if members of the Classes could afford individual litigation, the court
 12 system could not. Individualized litigation creates a potential for inconsistent or contradictory
 13 judgments and increases the delay and expense to all parties and the court system. By contrast,
 14 the class action device presents far fewer management difficulties and provides the benefits of
 15 single adjudication, economies of scale, and comprehensive supervision by a single court.
 16

17 **VII. CAUSES OF ACTION**

18 **COUNT ONE — VIOLATIONS OF THE WASHINGTON PUBLIC NUISANCE LAW,** 19 **RCW 7.48.010 ET SEQ.**

20 151. Plaintiff King County incorporates each preceding paragraph as though set forth
 21 fully herein.

22 152. Plaintiff brings this claim under RCW 7.48.020 individually and on behalf of the
 23 Washington Sub-Class.

24 153. Pursuant to RCW 7.48.010, an actionable nuisance is defined as, *inter alia*,
 25 “whatever is injurious to health or indecent or offensive to the senses . . .”
 26

1 154. Specifically, a “[n]uisance consists in unlawfully doing an act, or omitting to
2 perform a duty, which act or omission either annoys, injures or endangers the comfort, repose,
3 health or safety of others, offends decency . . . or in any way renders other persons insecure in
4 life, or in the use of property.” RCW 7.48.120.

5 155. Under Washington law, conduct that substantially and/or unreasonably interferes
6 with the Plaintiff’s use of its property is a nuisance even if it would otherwise be lawful.

7 156. Pursuant to RCW 7.48.130, “A public nuisance is one which affects equally the
8 rights of an entire community or neighborhood, although the extent of the damage may be
9 unequal.”
10

11 157. King County, its residents, and the Washington Sub-Class have a right to be free
12 from conduct that endangers their health and safety. Yet Defendants have engaged in conduct
13 which endangers or injures the health and safety of the residents of the County and the
14 Washington Sub-Class by their production, promotion, distribution, and marketing of JUUL
15 products for use by minors in King County and in a manner that substantially interferes with the
16 functions and operations of King County and the Washington Sub-Class and impacts the public
17 health, safety, and welfare of the entire King County and Washington State communities.
18

19 158. Each Defendant has created or assisted in the creation of a condition that is
20 injurious to the health and safety of Plaintiff and its students and employees and the Washington
21 Sub-Class and interferes with the comfortable enjoyment of life and property of the entire
22 communities of King County and Washington State at large.
23

24 159. Defendants’ conduct has directly caused a severe disruption of the public health,
25 order, and safety. Defendants’ conduct is ongoing and continues to produce permanent and long-
26 lasting damage.

160. This harm to the Plaintiff and the members of the Class outweighs any social utility of the Defendants' wrongful conduct because Defendants' conduct violates Washington's public policy against marketing vapor products like JUUL to minors. This policy is expressed through Washington State Governor Jay Inslee's Executive Order 19-03, finding that "it is the policy of the state of Washington to support the health, safety, and well-being of all Washingtonians" and that "e-cigarette use among youth has reached epidemic proportions and that this epidemic presents a clear and present danger." This policy is also expressed through statutes and regulations, including but not limiting to

- A. RCW 26.28.080, under which any person who sells, gives, or permits to be sold or given vapor products to a minor is guilty of a gross misdemeanor;
- B. RCW 70.345.140, under which it is illegal for minors to purchase vapor products
- C. RCW 70.345.090, under which it is illegal for any person to conduct a delivery sale or otherwise ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased by mail or through the internet to a minor
- D. King County Board of Health Code 19.12.060, under which it is illegal to sell, give, or furnish, or cause or allow to be sold, given or furnished, electronic smoking devices to a minor.

161. Defendants' conduct violated this public policy, including by

- A. Actively seeking to enter school campuses, targeting children as young as eight through summer camps and school programs, extensively targeting youth through social media campaigns, and recruiting "influencers" to market to teens;
- B. Engaging in marketing tactics specifically designed to mislead children and youth and to ensnare minors into nicotine addiction, including by explicitly adopting tactics prohibited from Big Tobacco, with the knowledge that those tactics were likely to ensnare children and youth into nicotine addiction, including using billboards and outdoor advertising, sponsoring events, giving free samples, paying affiliates and "influencers"

to push JUUL products on JUUL's behalf, and by selling JUUL in flavors designed to appeal to youth;

C. Engaging in advertising modeled on cigarette ads and featuring youthful-appearing models and designing advertising in a patently youth-oriented fashion;

D. Directing advertising to youth media outlets and media designed to appeal to children and youth, such as Instagram and other social media channels;

E. Hosting youth-focused parties across the United States, at which free JUUL samples were dispensed and in which vaping was featured prominently across JUUL-sponsored social media;

F. Formulating JUULpods with flavors with the knowledge that such flavors appealed to youth and with the intent that youth become addicted or dependent upon JUUL products; and

G. Promoting and assisting the growth of the JUUL market and its availability with knowledge that JUUL products were being purchased and used by large numbers of youth.

162. The health and safety of the youth of King County and the Washington Sub-Class, including those who use, have used, or will use JUUL products, as well as those affected by others' use of JUUL products, are matters of substantial public interest and of legitimate concern to the Plaintiff, as well as to the entire King County and Washington State communities.

163. Defendants' conduct has affected and continues to affect a substantial number of people within King County and the Washington Sub-Class and is likely to continue causing significant harm.

164. But for Defendants' actions, JUUL use by minors would not be as widespread as it is today, and the youth vaping public health epidemic that currently exists as a result of the Defendants' conduct would have been averted.

165. Logic, common sense, justice, policy, and precedent indicate Defendants' unfair and deceptive conduct has caused the damage and harm complained of herein. Defendants knew

1 or reasonably should have known that their statements regarding the risks and benefits of JUUL
2 were false and misleading, that its marketing methods were designed to appeal to minors, and
3 that its false and misleading statements, marketing to minors, and active efforts to increase the
4 accessibility of JUUL products and grow JUUL's market share were causing harm to minors and
5 to counties, including minors in King County, the County itself, and the Washington Sub-Class.
6 Thus, the public nuisance caused by Defendants was reasonably foreseeable, including the
7 financial and economic losses incurred by King County and the Washington Sub-Class.
8

9 166. Alternatively, Defendants' conduct was a substantial factor in bringing about the
10 public nuisance even if a similar result would have occurred without it. By directly marketing to
11 youth and continuing marketing practices after it was evidence that children were using JUUL
12 products in large numbers and were specifically using these products in school, JUUL directly
13 facilitated the spread of the youth vaping epidemic and the public nuisance effecting King
14 County and members of the Washington Sub-Class. By investing billions of dollars in JUUL and
15 actively working to promote the sale and spread of JUUL products with knowledge of JUUL's
16 practice of marketing its products to youth and failure to control youth access to its products,
17 Altria directly facilitated the spread of the youth vaping epidemic and the public nuisance
18 effecting King County and members of the Washington Sub-Class.
19

20 167. In addition, engaging in any business in defiance of a law regulating or
21 prohibiting the same is a nuisance per se under Washington law. Defendants' conduct described
22 herein of deceptively marketing JUUL products to minors violates RCW 7.48.010 and therefore
23 constitutes a nuisance per se.
24

25 168. King County has statutory authority to abate a public nuisance pursuant to
26 7.48.220 as a public body authorized by RCW 36.32.120(10).

1 169. Plaintiff has taken steps to address the harm caused by Defendants' conduct,
2 including the following:

- 3
- 4 A. Spending time and resources assembling information about the dangers of
5 youth vaping and the extent of youth vaping in the County;
- 6 B. Creating and publishing videos and infographics about JUUL use and the
7 youth vaping epidemic;
- 8 C. Writing newsletters about JUUL, the dangers of youth vaping, and ways
9 parents can help combat the epidemic;
- 10 D. Responding to calls from concerned parents seeking help for their children
11 who are addicted to nicotine through vaping;
- 12 E. Training teachers and parents to recognize JUUL products;
- 13 F. Educating teachers, parents, and youth about the risks of vaping; and
- 14 G. Updating King County's website to address the dangers of JUUL use.

15 170. Fully abating the epidemic of youth vaping resulting from Defendants' conduct
16 will require much more than these steps.

17 171. Pursuant to RCW 7.48.020, King County and the Washington Sub-Class request
18 an order providing for abatement of the public nuisance that Defendants have created or assisted
19 in the creation of, and enjoining Defendants from future violations of RCW 7.48.010.

20 172. Pursuant to RCW 7.48.020, Plaintiff and the Washington Sub-Class also seek the
21 maximum statutory and civil penalties permitted by law, including actual and compensatory
22 damages, as a result of the public nuisance created by Defendants.

23 173. Pursuant to RCW 4.22.070, Defendants are jointly and severally liable because
24 they have acted in concert with each other and because Plaintiff is not at fault.
25
26

**COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT (“RICO”), 18 U.S.C. § 1961, *ET SEQ.***

174. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

175. This claim is brought by Plaintiff against each Defendant for actual damages, treble damages, and equitable relief under 18 U.S.C. § 1964 for violations of 18 U.S.C. § 1961, *et seq.*

176. At all relevant times, each Defendant is and has been a “person” within the meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

177. Plaintiff is a “person,” as that term is defined in 18 U.S.C. § 1961(3), and has standing to sue as it was and is injured in its business and/or property as a result of the Defendants’ wrongful conduct described herein.

178. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity” 18 U.S.C. § 1962(c).

179. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

180. Each Defendant conducted the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c) and § 1962(d).

1 **A. Description of the Defendants’ Enterprises**

2 181. RICO defines an enterprise as “any individual, partnership, corporation,
3 association, or other legal entity, and any union or group of individuals associated in fact
4 although not a legal entity.” 18 U.S.C. § 1961(4).

5 182. Under 18 U.S.C. § 1961(4) a RICO “enterprise” may be an association-in-fact
6 that, although it has no formal legal structure, has (i) a common purpose, (ii) relationships among
7 those associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise’s
8 purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).

9 183. Defendant JUUL and the Altria Defendants formed an association-in-fact
10 enterprise—referred to herein as the JUUL Enterprise. The JUUL Enterprise is an ongoing and
11 continuing business organization consisting of “persons” within the meaning of 18 U.S.C. §
12 1961(3) that created and maintained systematic links for a common purpose: to maintain and
13 expand JUUL’s massive, and ill-gotten, share of the e-cigarette market.
14

15 184. As set forth above, Big Tobacco has long known the importance of targeting
16 youth and addicting them to nicotine. This profits-above-public-health mentality applies with
17 equal to force to e-cigarette market as well as the market for regular cigarettes. What was
18 different here was that Big Tobacco was out-competed by a start-up, albeit a start-up using some
19 of Big Tobacco’s tried and true tactics. As set forth in the complaint, JUUL obtained its massive
20 market share over a short time period by successfully targeting youth and addicting youth to
21 nicotine.
22

23 185. JUUL was well aware that its conduct was reprehensible, and that if it became
24 established and widely known that this was how JUUL obtained its massive market share, there
25 would likely be severe consequences. For this reason, it went to great lengths to conceal this
26

1 conduct by vociferously denying that it was marketing and targeting youth. Instead, JUUL
 2 argued that its product was created and designed as a “smoking cessation device”—despite the
 3 fact that the FDA never approved it as such, and that this smoking cessation device was slickly
 4 designed, easily concealable, and had its own “party mode.” These false statements were
 5 designed to protect JUUL’s market share by concealing its misconduct.
 6

7 **B. The Enterprises Sought to Fraudulently Increase Defendants’ Profits and Revenues**

8 186. Not everyone was fooled by JUUL’s deception, particularly JUUL’s competitors
 9 in the e-cigarette market. Altria recognized JUUL’s tactics for what they were, designed to addict
 10 children, and made this clear in a public letter to the FDA on October 25, 2018. Altria even
 11 displayed this letter on its website, disclaiming the very marketing and advertising tactics JUUL
 12 relied on. At this time, Altria had apparently concluded that it could not out-compete JUUL—
 13 that JUUL’s massive market share was too great to overcome. Altria informed the FDA that it
 14 was exiting the market for pod-based e-cigarettes, on the grounds that these products contributed
 15 to the youth vaping epidemic.
 16

17 187. Unfortunately, Altria’s purported concern for the public health was short-lived. A
 18 mere two months after publicly condemning JUUL’s tactics for targeting youth, in December of
 19 2018, Altria once again chose to place profits before the public health by making a \$12.8 billion
 20 equity investment in JUUL, the largest equity investment in US history. Having long followed
 21 JUUL’s market share dominance with envy, Altria decided to go from a competitor to a co-
 22 conspirator. Altria and JUUL thus formed a RICO enterprise—the JUUL Enterprise—with the
 23 goal of preserving, and profiting from, JUUL’s ill-gotten market share.
 24

25 188. The JUUL Enterprise recognized that one of the keys to preserving JUUL’s
 26 market share was to continue to falsely deny that JUUL marketed its tobacco products to youth.

1 Thus, in furtherance of their Enterprise, JUUL and Altria repeatedly made statements denying
2 that one of JUUL's intended targets for its product was children, that JUUL's product was really
3 created and designed as a smoking cessation device, and that JUUL's product was all along
4 intended for "switchers" (existing smokers that were open to vaping). These statements are false,
5 and constitute mail and wire fraud, predicate acts under RICO.
6

7 189. Thus, at all relevant times, each Defendant was aware of the conduct of the JUUL
8 Enterprise, was a knowing and willing participant in that conduct, and reaped profits from that
9 conduct in the form of sales and distribution of JUUL products.

10 190. The persons engaged in the JUUL Enterprise are systematically linked through
11 contractual relationships, financial ties, and continuing coordination of activities. The Altria
12 Defendants have invested \$12.8 billion dollars in JUUL—the largest equity investment in United
13 States history. This investment gives Altria a 35% stake in JUUL.
14

15 191. Altria has already publicly acknowledged that under the terms of its financial
16 relationship with JUUL, Altria will provide its considerable legal, regulatory and lobbying
17 expertise to help JUUL navigate its relationship with regulators. Presumably this would also
18 include former Commissioner Gottlieb's agency, the FDA. After receiving Altria's October letter
19 criticizing JUUL's tactics, and learning of Altria's \$12.8 billion investment, FDA Commissioner
20 Gottlieb was outraged and demanded a meeting. Commissioner Gottlieb described this meeting
21 as "difficult" and "did not come away with any evidence that public health concerns drove
22 Altria's decision to invest in JUUL, and instead sa[id] it looks like a business decision." Roughly
23 one month later, he abruptly resigned his position.
24

25 192. There is regular communication between JUUL and the Altria Defendants in
26 which information regarding Defendants' scheme to protect, maintain and expand JUUL's

1 market share is shared. Typically, this communication occurred, and continues to occur, through
2 the use of the wires and the mail in which Defendants share information regarding the operation
3 of the JUUL Enterprise and its cover-up of JUUL's efforts to target and addict youth.

4 193. The JUUL Enterprise functions as a continuing unit for the purposes of executing
5 accomplishing its objectives, and when issues arise, each member of the Enterprise agrees to take
6 actions to support the Enterprise.

7 194. Each Defendant participated in the operation and management of the JUUL
8 Enterprise by directing its affairs as described herein. Altria's \$12.8 billion investment gives it a
9 35% ownership stake in JUUL, and allows it to appoint a third of its board. In a sign of Altria's
10 management influence and control, last month, JUUL's CEO resigned to be replaced by a career
11 Altria executive, K.C. Crosthwaite. Mr. Crosthwaite had most recently served as the vice
12 president and chief growth officer of Altria Client Services LLC, overseeing the company's
13 work, including digital marketing, packaging design & innovation, product development, and
14 safety, health, and environmental affairs. Crosthwaite is intimately familiar with Big Tobacco's
15 practices, having previously served as the president and CEO of Phillip Morris USA, the vice
16 president and general manager at Marlboro, and the vice president of strategy and business
17 development of at Altria Client Services LLC.

18 195. While Defendants participate in, and are members of, the JUUL Enterprise, they
19 have an existence separate from the Enterprise, including distinct legal statuses, affairs, offices
20 and roles, officers, directors, employees, and individual personhood.

21 196. Without the willing participation of each Defendant, the JUUL Enterprise's
22 common course of conduct would not be successful.

C. Predicate Acts: Mail and Wire Fraud

197. To carry out, or attempt to carry out, the objectives of the JUUL Enterprise, the members of the Enterprise, each of whom is a person associated-in-fact with the Enterprise, did knowingly conduct or participate in, directly or indirectly, the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and employed the use of the mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

198. Specifically, the members of the JUUL Enterprise have committed, conspired to commit, and/or aided and abetted in the commission of, at least two predicate acts of racketeering activity (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years.

199. The multiple acts of racketeering activity which the members of the JUUL Enterprise committed, or aided or abetted in the commission of, were related to each other, posed a threat of continued racketeering activity, and therefore constitute a “pattern of racketeering activity.”

200. The racketeering activity was made possible by the Enterprise’s regular use of the facilities, services, and employees of the Enterprise.

201. The members of the JUUL Enterprise participated in the Enterprise by using mail, telephone, and the internet to transmit mailings and wires in interstate or foreign commerce.

202. The members of the JUUL Enterprise used, directed the use of, and/or caused to be used, thousands of interstate mail and wire communications in service of the Enterprise’s objectives through common misrepresentations, concealments, and material omissions.

203. In devising and executing the objectives of the JUUL Enterprise, its members devised and knowingly carried out a material scheme and/or artifice to defraud the public by

1 denying that JUUL's products were marketed to youth, and that JUUL was really created and
 2 designed as a smoking cessation device.

3 204. For the purpose of furthering its desire to preserve and increase its market share,
 4 even at the expense exposing and addicting children to nicotine, the JUUL Enterprise committed
 5 these racketeering acts, which number in the thousands, intentionally and knowingly with the
 6 specific intent to advance its objectives.
 7

8 205. The JUUL Enterprise's predicate acts of racketeering (18 U.S.C. § 1961(1))
 9 include, but are not limited to:

10 A. Mail Fraud: the JUUL Enterprise violated 18 U.S.C. § 1341 by sending or
 11 receiving, or by causing to be sent and/or received, fraudulent materials via U.S.
 12 mail or commercial interstate carriers for the purpose of deceiving the public
 13 regarding its efforts to market to youth and the true purpose and design behind its
 14 products.

15 B. Wire Fraud: The JUUL Enterprise violated 18 U.S.C. § 1343 by transmitting
 16 and/or receiving, or by causing to be transmitted and/or received, fraudulent
 17 materials by wire for the purpose of deceiving the public regarding its efforts to
 18 market to youth and the true purpose and design behind its products.

19 The JUUL Enterprise falsely and misleadingly used the mails and wires in violation of 18 U.S.C.
 20 § 1341 and § 1343. Illustrative and non-exhaustive examples include the following:
 21

22 A. "JUUL Labs was founded by former smokers, James and Adam, with the goal of
 23 improving the lives of the world's one billion adult smokers by eliminating cigarettes. We
 24 envision a world where fewer adults use cigarettes, and where adults who smoke
 25 cigarettes have the tools to reduce or eliminate their consumption entirely, should they so
 26 desire." (JUUL Labs Website as of Oct. 7, 2019);

B. "JUUL Labs exists to help adult smokers switch from combustible cigarettes."
 (JUUL Labs Website as of Oct. 7, 2019);

C. "JUUL was designed with adult smokers in mind. . . . JUUL provides satisfaction
 to meet the standards of adult smokers looking to switch from smoking cigarettes."
 (JUUL Labs Website as of Oct. 7, 2019);

D. "Our Intent[:] . . . [W]e believe that vaping can have a positive impact when used
 by adult smokers, and can have a negative impact when used by nonsmokers. Our goal is

1 to maximize the positive and reduce the negative.” (JUUL Labs Website as of Oct. 7,
2 2019);

3 E. “It’s a really, really important issue. We don’t want kids using our products.”(
4 JUUL Chief Administrative Officer Ashely Gould, CNBC Interview, Dec. 14, 2017);

5 F. “We market our products responsibly, following strict guidelines to have material
6 directly exclusively toward adult smokers and never to youth audiences.” (JUUL Social
7 Media Post, Mar. 14, 2018);

8 G. “We don’t want anyone who doesn’t smoke, or already use nicotine, to use JUUL
9 products. We certainly don’t want youth using the product. It is bad for public health, and
10 it is bad for our mission. JUUL Labs and FDA share a common goal – preventing youth
11 from initiating on nicotine. To paraphrase Commissioner Gottlieb, we want to be the off-
12 ramp for adult smokers to switch from cigarettes, not an on-ramp for America’s youth to
13 initiate on nicotine. We won’t be successful in our mission to serve adult smokers if we
14 don’t narrow the on-ramp. . . . Our intent was never to have youth use JUUL products.
15 But intent is not enough, the numbers are what matter, and the numbers tell us underage
16 use of e-cigarette products is a problem. We must solve it.” (Statement of Former CEO of
17 JUUL, Ken Burns posted on the JUUL website Nov. 13, 2018);

18 H. “We are taking significant action to prepare for a future where adult smokers
19 overwhelmingly choose non-combustible products over cigarettes by investing \$12.8
20 billion in JUUL, a world leader in switching adult smokers. We have long said that
21 providing adult smokers with superior, satisfying products with the potential to reduce
22 harm is the best way to achieve tobacco harm reduction.” (Statement of Howard Willard,
23 Altria Chairman and Chief Executive Officer in a Altria Press Release, Dec. 20, 2018);

24 I. “First of all, I’d tell them that I’m sorry that their child’s using the product. It’s
25 not intended for them. I hope there was nothing that we did that made it appealing to
26 them. As a parent of a 16-year-old, I’m sorry for them, and I have empathy for them, in
terms of what the challenges they’re going through.” (JUUL CEO Ken Burns, CNBC
Interview, July 13, 2019);

J. “We never wanted any non-nicotine user, and certainly nobody under the legal
age of purchase, to ever use Juul products. . . .That is a serious problem. Our company
has no higher priority than combatting underage use.” (Testimony of JUUL Founder
James Monsees Before the House Committee on Oversight and Reform Subcommittee on
Economic and Consumer Policy, July 25, 2019);

K. “We have no higher priority than to prevent youth usage of our products which is
why we have taken aggressive, industry leading actions to combat youth usage.” (JUUL
statement in response to lawsuits, Aug. 13, 2019);

L. James Monsees, one of the company’s co-founders, said selling JUUL products to
youth was “antithetical to the company’s mission.” (Quoted in New York Times article,
Did JUUL Lure Teenagers and Get ‘Customers for Life’?, Aug. 27, 2018);

1 M. “Our focus is and will remain entirely on helping adult smokers switch away from
 2 combustible cigarettes, the leading cause of preventable death in the world.” (Joshual
 3 Raffel, Juul spokesperson, quoted in New York Times article, *Philip Morris and Altria*
Are in Talks to Merge, August 27, 2019);

4 N. “We have never marketed to youth and we never will.” (JUUL statement quoted
 5 in Los Angeles Times article, *Studies show how Juul exploited social media to get teens*
to start vaping, Sep. 24, 2019)

6
 7 206. The mail and wire transmissions described herein were made in furtherance of
 8 Defendants’ scheme and common course of conduct designed to cover-up JUUL’s marketing to
 9 youth, thereby increasing or maintaining JUUL’s market share, resulting in corresponding high
 10 profits for all Defendants.

11 207. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
 12 wire facilities have been deliberately hidden and cannot be alleged without access to Defendants’
 13 books and records. However, Plaintiff has described the types of predicate acts of mail and/or
 14 wire fraud, including the specific types of fraudulent statements upon which, through the mail
 15 and wires, the JUUL Enterprise engaged in fraudulent activity in furtherance of its scheme.

16
 17 208. The members of the Enterprise have not undertaken the practices described herein
 18 in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. §
 19 1962(d), the members of the JUUL Enterprise conspired to violate 18 U.S.C. § 1962(c), as
 20 described herein. Various other persons, firms, and corporations, including third-party entities
 21 and individuals not named as defendants in this Complaint, have participated as co-conspirators
 22 with Defendants and the members of the JUUL Enterprise in these offenses and have performed
 23 acts in furtherance of the conspiracy to increase or maintain revenue, maintain or increase market
 24 share, and/or minimize losses for the Defendants and their named and unnamed co-conspirators
 25 throughout the illegal scheme and common course of conduct.
 26

1 209. The members of the JUUL Enterprise aided and abetted others in the violations of
2 the above laws.

3 210. To achieve their common goals, the members of the Enterprise hid from Plaintiff
4 and the public: (1) the fraudulent nature of the JUUL Enterprise scheme; (2) the fraudulent
5 nature of statements made by the JUUL Defendant regarding its efforts to target youth and the
6 nature of its product; and (3) the true nature and objective of the relationship between the
7 members of the Enterprise.
8

9 211. Each member of the JUUL Enterprise, with knowledge and intent, agreed to the
10 overall objectives of the schemes and participated in the common course of conduct. Indeed, for
11 the conspiracy to succeed, each of the member of the JUUL Enterprise had to agree to conceal
12 their fraudulent scheme.
13

14 212. The members of the JUUL Enterprise knew, and intended that, the public would
15 rely on the material misrepresentations and omissions made by them.

16 213. As described herein, the members of the JUUL Enterprise engaged in a pattern of
17 related and continuous predicate acts for years. The predicate acts constituted a variety of
18 unlawful activities, each conducted with the common purpose of maintaining JUUL's ill-gotten
19 market share and thereby continuing to receive significant monies and revenues from the public,
20 including youth, based on their misconduct.
21

22 214. The predicate acts also had the same or similar results, participants, victims, and
23 methods of commission.

24 215. The predicate acts were related and not isolated events.
25
26

216. Defendants' fraudulent concealment was material to Plaintiff and the public. The pattern of racketeering activity described above is currently ongoing and open-ended, and threatens to continue indefinitely unless this Court enjoins the racketeering activity.

D. Plaintiff Has Been Damaged by Defendants' RICO Violations

217. Plaintiff has been injured by Defendants' predicate acts. The repeated misstatements by the Defendants denying that JUUL marketed to youth and addicted children to nicotine serve to preserve JUUL's market share—a market share that is based upon children purchasing JUUL's tobacco products. The creation and maintenance of this youth e-cigarette market directly harms Plaintiff by imposing costs on its business and property.

218. Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to King County, its community, and the public, and the County is entitled to bring this action for three times its actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Certifying this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Nationwide Class and Washington Sub-Class;
2. Entering an Order that the conduct alleged herein constitutes a public nuisance under Washington law, including RCW 7.48 *et seq.*;
3. Entering an Order that the Defendants are jointly and severally liable;
4. Entering an Order requiring the Defendants to abate the public nuisance described herein and to deter and/or prevent the resumption of such nuisance;

1 5. Enjoining Defendants from engaging in further actions causing or contributing to
2 the public nuisance as described herein;

3 6. Awarding equitable relief to fund prevention education and addiction treatment;

4 7. Awarding actual and compensatory damages;

5 8. Awarding statutory damages in the maximum amount permitted by law;

6 9. Awarding reasonable attorneys' fees and costs of suit;

7 10. Awarding pre-judgment and post-judgment interest; and

8 11. Such other and further relief as the Court deems just and proper under the
9 circumstances.
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11 **JURY TRIAL DEMANDED**

12 Plaintiff hereby demands a trial by jury.

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1 RESPECTFULLY SUBMITTED this 16th day of October, 2019.

2 KELLER ROHRBACK L.L.P.

3
4 By /s/ Derek W. Loeser
Derek W. Loeser, WSBA #24274

5
6 /s/ Gretchen Freeman Cappio
Gretchen Freeman Cappio, WSBA #29576

7 /s/ Dean Kawamoto
Dean Kawamoto, WSBA #43850

8
9 /s/ Alison S. Gaffney
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10 /s/ Felicia J. Craick
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